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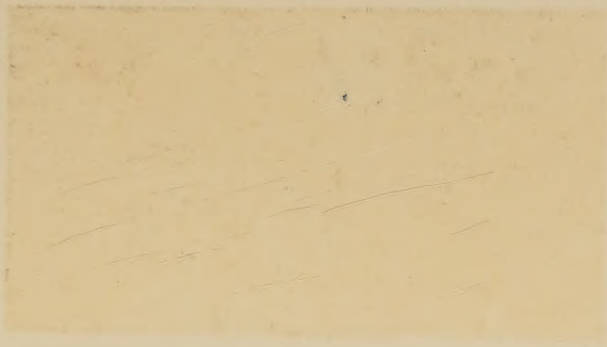

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CONSTITUTION OF THE CHURCH

IN THE NEW CODE OF CANON LAW

(Lib. II., Can. 215-486)

BY

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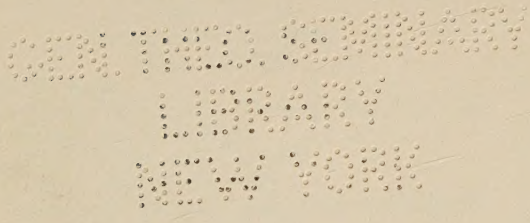

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CONSTITUTION OF THE CHURCH IN THE NEW CODE OF CANON LAW

INTRODUCTION

The second book of the Code, which contains the legislation on Persons, treats in three distinct parts of Clerics, Religious, and Laymen. The first part has two sections, one on Clerics in general, the other on Clerics in particular. This volume deals with the second section.

Clerics are considered here according to the power, principally of jurisdiction, they exercise or the office they hold and consequently the place they occupy in the organization of the Church.

The essential elements of the Church's organization or constitution come from Christ Himself, who appointed St. Peter and under Him the Apostles and their successors to teach and rule His flock to the end of time.

As the Christian community grew, the Supreme Pontiff and the Bishops needed assistants for the fulfillment of their mission. This gave rise to the various ecclesiastical offices and to the different classes of clerics, some of whom share in the power and responsibilities of the Sovereign Pontiff, others in those of the Bishops. Their number and attributions have undergone accidental changes in the course of centuries. The section of the Code now under consideration (Can. 215-486) represents the discipline actually in force.

Here, then, we study the Constitution of the Church as defined in its main details by present

legislation; at the center, the Pope, as the foundation and principle of unity, with supreme and universal authority; under him, as members of a body of which he is the head, the Bishops, with real yet limited and subordinate authority over the portion of the flock committed to their care.

In the government of the universal Church the Pope has the assistance, occasionally of the Bishops gathered in Council, habitually of the Cardinals and other Prelates organized into Congregations, Tribunals and Offices. Over the particular churches he watches through Legates, Patriarchs, Primates, Metropolitans, Vicars, Prefects and Administrators Apostolic, Prelates and Abbots Nullius.

For the general administration of his diocese the Bishop has also helpers: sometimes an Auxiliary or Coadjutor, periodically, the Diocesan Synod, and habitually the Vicar-General, the Chapter or Diocesan Consultors, and the various members of the Diocesan Court. His action extends to every portion of the territory confided to him and to each one of the faithful through Vicars Forane, Parish Priests, Assistant Pastors, Rectors of churches, Chaplains.

This organization of the Catholic Church, whose influence has not ceased to increase for nineteen centuries, has forced the admiration of outsiders themselves and even of enemies.

To those of the flock it should prove a matter of legitimate pride and of intense interest.

A thorough understanding of it, whilst useful to all, is indispensable to those who have in it a privileged place and wield some measure of spiritual authority.

The method followed in this work is the same as in previous ones, partly historical and partly positive.

BOOK II SECTION II

ON CLERICS IN PARTICULAR

(Can. 215–486)

PRELIMINARY NOTIONS

TERRITORIAL DIVISIONS OF THE CHURCH.

(Can. 215-217.)

(Maroto, Institutiones Canonicae, n. 738; Thomassin, Ancienne et Nouvelle Discipline de L'Eglise, L. I; Hefele-Leclercq, Histoire des Conciles, I, p. 540 ff, 1182 ff; L. Duchesne, Christian Worship, c. 1; P. Battiffol, La Paix Constantinienne et le Catholicisme, Paris, 1914, ch. 11; C. H. Turner, Studies in Early Church History, Oxford, 1912, c. II, 111.)

1. As the members of the Church's hierarchy can not all possess universal jurisdiction, the limits of their power must be determined in some manner. Frequently, or even ordinarily, jurisdiction is attached immediately to a territory, hence the importance of territorial divisions in Church organization. For this reason the legislator gives us here a general outline of these divisions before he proceeds to set forth in detail the powers connected with each ecclesiastical office.

1. *Historical Development.* 1°. As long as the Apostles lived they retained the government of the Christian communities they had founded; after their death the local organizations are completed and grow more independent; the letters of St. Ignatius at the beginning of the second century show at the head of each church one Bishop vested with full authority and assisted by priests and deacons.

These early Bishops ruled over congregations estab-

lished almost exclusively in cities. When Christianity had penetrated into the country, which came to pass at a very early date in the East, as the letter of Pliny to Trajan proves, the neighboring territory naturally fell under their care and it became necessary to fix the limits of their jurisdiction. The Roman administration had divided the provinces into cities, each *civitas* including together with the city itself a well-determined district around it. These divisions being found convenient, the Church generally adopted them, so that the jurisdiction of the Bishop, like that of the civil magistrates, would be co-extensive with the *civitas*.

2°. The local churches did not remain isolated, and although enjoying a large amount of autonomy they never considered themselves as self-sufficient. Episcopal elections and consecrations required the presence of several Bishops. When heresy, like Montanism at the end of the second century, threatens the faith, or when difficulties arise about some point of discipline, as at the time of the paschal controversy, synods are held, and we see the Bishops of certain regions gathered around one of them, generally the Bishop of the principal city or of the church which had been the mother of the others—those of Palestine around the Bishop of Caesarea or Jerusalem, those of Asia around Polycrates of Ephesus, etc. As time goes on, the bonds uniting these prelates grow closer and the central sees acquire greater pre-eminence; ecclesiastical provinces are thus gradually formed. The Council of Nicaea gave its sanction to the provincial organization and completed it by defining with greater precision the duties and rights of Metropolitans. (Can. 4, 5.)

2. 3°. In the reorganization of the Roman Empire under Diocletian, provinces were grouped into dioceses over which presided Vicars. There

were originally four dioceses; Theodosius added a fifth one. The Council of Constantinople in 381 adopted this division and created five exarchates, called afterwards patriarchates.

4°. Above Metropolitans and Patriarchs stood the Bishop of Rome, whose authority, although exercised more immediately and habitually over the Roman province and the dioceses of Italy, extended to all churches, as shown by his intervention in the cases of Cyprian of Carthage, Denys of Alexandria, Paul of Antioch, Marcianus of Arles, and others.

5°. In the beginning each diocese consisted of one community and had only one church. As Christians multiplied in the cities and particularly in country places, it became necessary to establish new centers of worship with a distinct clergy attached to them. Councils of the fourth century speak of country Bishops and priests (Ancyra, 314, c. 13; Neocaesarea, 314-325, c. 13, 14); Denys of Alexandria mentions priests who look after the brethren in the country under the jurisdiction of the Bishop of Arsinoe in Egypt and St. Athanasius refers to those who have charge of the ten principal villages of the Mareotis district near Alexandria. (Eusebius, H. E., vii, 24; Apol. cont. Arianos, 85.) These secondary churches and their clergy at first depended entirely on the Bishop, but in the country they soon had resources of their own, some autonomy was granted and a definite territory assigned to them. This division of dioceses into parishes, or as they are often called christianitates, took place slowly and gradually, at a comparatively early date in the East, later in the West, during the course of the fourth to the sixth century in Gaul, Spain, etc. (Arles, 314, Can. c. 18, 21), not till the seventh in England.

6°. The development of the parochial system and the multiplication of churches made it difficult for

Bishops in large and populous dioceses to exercise close personal supervision over their clergy and people; this led them in the West to divide their territory into districts including several parishes over which they placed a representative of their authority, the Archpriest or later on the Vicar Forane or the Dean. (Tours, 567, Can. 19; Auxerre, 578, Can. 20, 44.)

3. 2. *Present Discipline.* 1°. The diocese remains one of the essential elements of normal Church organization. In countries newly opened to the Gospel, where clergy and people are few and resources limited, the spiritual government is entrusted to Prefects Apostolic and after further progress to Vicars Apostolic, but as soon as conditions permit dioceses are erected and Bishops appointed. Some territories, by way of exception, have not been included in any diocese, but are ruled by Abbots or Prelates who have the same ordinary powers and duties as Bishops; the Code declares that all the enactments of law regarding dioceses and Bishops apply also to Abbeys and Abbots or Prelates Nullius. (Can. 215, 319 ff.)

2°. Regularly dioceses are grouped into provinces, although by reason of special circumstances some Bishops depend immediately on the Holy See. (Can. 272-279.)

Of the old patriarchates or primacies little more survives than the title and some honorary prerogatives. (Can. 271.)

The erection, division, modification of limits, union, and suppression of ecclesiastical provinces, dioceses, abbeys, prelacies nullius, vicariates apostolic and prefectures apostolic has been for a long time reserved to the supreme authority in the Church. In the first centuries new dioceses were erected by Metropolitans, Provincial Synods, and also not un-

frequently by individual Bishops in their own territory. This led at times to an excessive multiplication of episcopal sees, which Councils (Sardica, 343, Can. 6; Laodicea, 383, Can. 57) and Popes reprove (St. Leo, Epist. to African Bishops, 87, c. 2). In the eighth and ninth centuries the interventions of the Roman Pontiffs in these matters became more frequent and by the end of the tenth they had practically excluded all others. In 1092 Pope Urban II explicitly declared in a letter to Rainald, Archbishop of Reims, that it is the privilege of the Apostolic See to divide or unite dioceses and establish new ones. The discipline has not varied since (1, X, 1, 7; 4, X, 1, 30) and the Code formally confirms the old law (Can. 215). (Wernz, Jus Decretalium, II, n. 244; Thomassin, l. c., c. 54-58.)

4. 3°. Parochial organization. (*a*) The present law demands that the territory of all dioceses, including those under the Propaganda, be divided into a certain number of sections and that to each section be assigned its own church, its well determined people and its distinct rector charged with the care of souls as the proper pastor.

(*b*) Vicariates and Prefectures Apostolic should be divided in like manner wherever found convenient. A subsequent Instruction of the Propaganda (July 25, 1920; A. A. S., Aug. 2, 1920; Canoniste, Sept. 1920, p. 416) explained this enactment as meaning that Vicars and Prefects Apostolic must aim at effecting that division as soon as possible without, however, proceeding hastily where the necessary resources might be wanting (Can. 1415), taking into account the needs of souls and prospects of future development. If a portion of the territory is ready for division let it be divided without waiting till the rest is ready also. The quasi-parishes are erected by decree of the Ordinary and two copies of the

document are preserved, one in the archives of the Vicariate or Prefecture, the other in those of the new quasi-parish. After the formal erection the priest in charge of a quasi-parish has *ipso facto* all the rights and obligations of quasi-pastors as laid down in the Code (Can. 451, 456-461), notably in regard to marriage. (Can. 1095, 1096.) Where quasi-parishes have not been established the missionaries act as assistants to the Vicar or Prefect. All the churches, chapels, or oratories within the limits of a quasi-parish become subject to the latter till they obtain exemption.

5. (*c*) The sections into which dioceses are divided in the manner described above form parishes. This holds in all countries having a regularly organized hierarchy, even though they still be under the Propaganda, only in the latter case these parishes are governed by the same laws as quasi-parishes. (S. C. Prop., Dec. 9, 1920; A. A. S., 1921, p. 17.) The subdivisions of Vicariates or Prefectures Apostolic, when they have a rector of their own, form quasi-parishes.

From this legislation it clearly follows that in countries like the United States, England, and others, in which even after the Const. *Sapienti Consilio* (1908), which brought them under the common law, there were only quasi-parishes, the strict parochial system ought henceforth to prevail. But it did not seem so clear at first whether or not the quasi-parishes in those countries had become *ipso facto* parishes as soon as the Code went into force, without any further formality of erection. American canonists generally held that they had, and that after May 18, 1918, pastors in the United States were under strict obligation of saying the Mass *pro populo*. (Eccles. Rev., July, 1918, p. 77; May, 1919, p. 544 ff.) Canon 216, they said, places parishes in this

country in the category of canonical parishes; the Code names and allows only one kind of diocesan division, and our dioceses are divided in the particular manner prescribed. Any erection needed is contained in the recognition by the Code of our *de facto* condition as canonical. They found a confirmation of their interpretation in an answer of the Cong. of the Council (July 13, 1918) to the Bishop of Breslau, in Germany, which however, dealt with a different case. (Eccles. Rev., May 19, 1919, p. 545.) A few, on the other hand, maintained that some form of erection is necessary to raise quasi-parishes to the rank of canonical parishes. They argued from the text itself of the law, which demands that each diocese be divided, *dividatur,* into certain portions and each portion be made a parish, supposing that it is not one already, but does not indicate that a change is actually effected by the legislator in the canonical status of the existing divisions. Such a summary way of proceeding is not in the traditions of the Roman Church, they said, as the Consistorial Congregation declared recently again in defining the application of the decree *Maxima Cura* to the United States. (June 28, 1915.) It did not appear likely, therefore, that the Holy See would intend, by a stroke of the pen, without any investigation, to confer full parochial rights upon thousands of quasi-parishes or missions when the Code so carefully lays down the conditions required for the erection of any benefice and parish and implicity demands a close study of each case in particular. (Can. 1409, 1410; 1415-1418.)

6. The S. Consistorial Congregation, consulted on the subject, answered as follows (Aug. 1, 1919):

(i) In the dioceses in question, the territorial divisions that have a distinct rector must, by Can.

216, be real parishes in name and in fact, the appellation quasi-parish or mission being reserved to portions of Vicariates or Prefectures Apostolic.

(ii) To constitute parishes a decree of the Ordinary is needed, fixing the limits and seat of the parish and the income necessary for the support of the clergy and church; but the privilege of permanency need not be granted to the pastor, and for just causes it may even be stipulated in the decree of erection that he will be removable as explained in Canons 1411, § 4; 454, § 3; 1438.

(iii) Some quasi-parishes or missions may have such a small and fluctuating population and resources so limited that it would not be advisable to make them parishes; let them remain for the present attached to some other parish and their churches serve as subsidiary churches until they become parishes in their turn.

(iv) In estimating the resources of a prospective parish not only the endowment proper should be taken into account but also other means of support, such as the free but reliable offerings of the faithful, stole fees, etc. (Can. 1409, 1410, 1415.)

(v) After the erection of the parish, its rector, pastor, or administrator, is bound to say the Mass *pro populo;* this obligation does not exist for rectors of subsidiary churches or chapels. The Holy See would dispense from it, wholly or in part, should it prove too heavy a burden in the case of some poor parishes. A few years later, as there still remained some uncertainty as to the real status of parishes in the United States, His Excellency the Apostolic Delegate submitted to the Commission for the interpretation of the Code several *dubia,* which the President of said Commission, His Eminence Cardinal Gasparri, answered under date of Sept. 26, 1921. In this reply, communicated to the Bishops under

date of Nov. 10, 1922, he states that for the erection of a parish which has not the character of a benefice it is not necessary that the Ordinary should issue a formal decree declaring that he erects a certain district into a parish, but that it suffices to divide the territory into districts, define the territorial limits of each, and assign a rector to the people and the church within said limits.

His Eminence, the President of the Commission, further declared that a parish is always a benefice, whether it has the proper endowment as defined in Canon 1410, § 5 or sufficient support from other sources, such as free but reliable offerings, stole fees, etc., as described in Canon 1415, § 3.

He added, moreover, that after the promulgation of the New Code no special decree was needed on the part of the Ordinary to constitute as canonical parishes those which previous to that promulgation had been established in the manner described above, with definite territorial limits and a special rector; such parishes became canonical parishes, *ipso facto,* on the promulgation of the Code.

It is evident, from this official answer, concluded the Delegate, that all the parishes in the United States having the three necessary qualifications, viz., a resident pastor, an endowment or sufficient resources and boundaries are not only parishes in the strict canonical sense but also ecclesiastical benefices, and their pastors have all the obligations of canonical pastors. This does not apply to national parishes which have no strict boundaries.

7. (*d*) Regularly parishes or quasi-parishes ought to be territorial, not personal. In some countries there are or have been parishes consisting of a few families or of a certain class of persons without any relation to territory. At other times several parishes have been established in the same city or

district for the faithful of diverse language or nationality. Canon Law does not consider this condition of things as altogether normal, although special circumstances may justify it or even render it necessary. Where such personal or national parishes canonically erected before the Code exist, acquired rights should be respected and nothing changed without consulting the Holy See, but to establish new ones Ordinaries would now need an Apostolic Indult.

The purpose of national parishes in the United States is to provide in their own language for the spiritual need of immigrants who do not understand English, not, as a decree of the Propaganda of April 26, 1897, shows, to perpetuate foreign elements which might prove a hindrance to unification. Hence the children of parents who, having come from abroad, speak a language other than English, are not bound after they become emancipated to remain connected with the parish to which their parents belong, but they may join any parish in which the English language is used. In like manner Catholics who are not natives of America but know English may become affiliated with a parish in which this tongue is used, although there be in the place a church for people of their nationality. (Eccles. Rev., July, 1897, p. 87.)

8. 4°. Bishops should distribute their dioceses into districts, each one comprising several parishes and to go by the name of vicariates forane, deaneries, etc. If circumstances render this division impossible or inopportune, the Holy See ought to be consulted, unless it has already provided for the case. The code does not mention here Vicariates or Prefectures Apostolic, but the S. C. of the Propaganda, in an Instruction of July 25, 1920, strongly recommends for them, without strictly imposing it, some organization similar to deaneries.

TITLE VII

ON THE SUPREME POWER AND THOSE WHO SHARE IN IT BY ECCLESIASTICAL LAW

(Can. 218-328.)

Chapter I

On the Roman Pontiff
(Can. 218-221.)

(Palmieri, De Romano Pontifice; Bouix, De Papa; Ferraris, Papa; Wernz, II, n. 565; Maroto, n. 775.)

9. The Pope's power being supreme and universal, ecclesiastical legislation need not determine the limits of its exercise, whether as regards matters, persons, territory, or mode of proceeding. Hence the relatively small place occupied by this subject in the Code; only four Canons are devoted to it. A brief statement of a few general principles suffices here.

1. *Origin of the Pope's Power.* Christ conferred upon St. Peter and upon his successors a primacy not of honor merely but of jurisdiction also, over the whole Church.

The successors of St. Peter are, *de facto* if not strictly by divine right, the Bishops of Rome.

As soon, therefore, as one has been legitimately appointed Bishop of Rome and he has accepted the appointment, by virtue of the promise made to St. Peter, Christ bestows upon him supreme jurisdiction in the Church. He does not receive it from his

electors but from God Himself, and consequently no human power can set any limits to it or take it away from him.

10. 2. *Election of the Pope.* (Wernz, l. c., n. 567; L. Lector, Le Conclave, Paris, 1894; F. M. Capello, De Curia Romana, vol. II, L. III, Romae, 1912.)

Although Christ intended that St. Peter's primacy should pass to his successors, He did not determine the mode of its transmission, but left this to His representatives in the Church and first of all to the Supreme Pontiff.

Some canonists admit that the Pope can validly, and even lawfully for very serious reasons, designate his successor, and historians find an example of this in the appointment of Boniface II by his predecessor Felix IV (d. 530). (Wernz, n. 567; Capello, n. 187, 211; S. Many, S.S., Du droit du Pape de designer son successeur, in Revue de l'Institut Catholique de Paris, Mars 1901; Heffele-Leclercq, Histoire des Conciles, T. IV, p. 818-824, 1139-1165; contra, Cl. Cavagnis, Institutiones Juris publici ecclesiastici, vol. II, p. 141; G. Peries, L'intervention du Pape dans l'election de son successeur, Paris, 1902.) Regularly, however, if not necessarily, Popes are elected, but the electors and the form of election have varied.

11. *A.* Ancient Discipline. (*a*) In the beginning the Bishop of Rome was elected, like all other Bishops, by the neighboring Bishops with the cooperation of the local clergy and of the people. (St. Cyprian, Epist. 55, c. 24.) This method offered at first no serious inconvenience generally, although the election of St. Damasus gave occasion to grave disorders and even battles in the streets of Rome.

When the Christian population had grown larger,

civil rulers had often to intervene to maintain order, and soon they asked for their share in the proceedings. The emperors of Constantinople and then the Italian kings put forth claims against which it frequently proved difficult to maintain the independence of papal elections. In the ninth and tenth centuries these fell in large measure under the control of Italian princes, local factions, or the great Roman families. After the restoration of the Holy Roman Empire the German emperors, principally from Otto I to Henry V, often used their power to obtain or enforce a right of presentation or ratification. From all this great abuses necessarily followed.

(*b*) To remedy these abuses the Popes of the eleventh century determined to eliminate the lay element and the lower clergy from the electoral body. Nicholas I (d. 1061) commenced the work, Gregory VII continued it, and Alexander III afterwards completed it (1181) by reserving to the Cardinals exclusively the privilege of electing the Pope.

(*c*) In order to hasten the elections and thus avoid long vacancies, Gregory X organized the Conclave (Const. *Ubi Periculum,* July 7, 1274); he decreed that ten days after the death of the Pope the Cardinals would meet in the palace in which he had died, to choose a successor. All were to assemble in one room (Conclave) and remain there without communication with the outside world till completion of the election. Subsequent Popes modified or completed the regulations regarding the Conclave; some suppressed it, but it was soon restored and has remained to the present day. (Catholic Encyclopedia, Conclave.)

(*d*) All the supposed rights and privileges of civil rulers had been abrogated, but this did not prevent them from trying to influence elections in various

ways. About the middle of the seventeenth century three nations, Austria, France, and Spain put forth a new claim, the so-called *Jus Exclusivae,* which enabled them to exclude from election one candidate at each Conclave. Rome never really recognized any such right, but in as far as it might have existed it was done away with by Pope Pius X, who strictly forbade all interference of civil rulers in papal elections and pronounced excommunication against any Cardinal or other member of the Conclave who would, under any form or pretext whatsoever, transmit to the Sacred College the veto or request of the secular power. (*Commissum nobis,* Jan. 20, 1904.) (Catholic Encyclopedia, Exclusion, right of.)

12. *B.* Present Discipline. Papal elections are now governed by the rules laid down in the Constitution of Pius X, *Vacante Sede Apostolica,* Dec. 25, 1904 (Can. 160). Here are some of its principal prescriptions.

(*a*) During the vacancy Cardinals have no authority in matters usually reserved to the Pope, nor can they do anything which might be detrimental to the rights of the Holy See. They attend to all urgent affairs; the Congregations retain their ordinary faculties, as do also the Nuncios, Apostolic Delegates, etc.

(*b*) The obsequies of the Pope last nine days; fifteen or at the most eighteen days after his death the Conclave must be opened. The dean of the Sacred College has informed all the Cardinals of the death of the Pope and it is their strict duty to repair to Rome without delay. Even those who might be under censure have the right to take part in the election. There is no obligation of waiting for any one of them more than eighteen days; those who arrive late are admitted when they arrive. Once they

have entered the Conclave no one can go out except in case of serious sickness and all must at the sound of the bell repair to the room where the election is held.

(*c*) The proceedings begin with the singing of the *Veni Creator* and the taking of the oath to observe faithfully the Constitutions of the Roman Pontiffs concerning the Conclave. Then the doors are locked and from this moment the Cardinals may not have communication with the outside except under proper control; they are forbidden under pain of excommunication to transmit any information regarding the election, a prohibition which remains in force even after the proceedings are over, till removed by the Pope.

(*d*) The election may be made in three ways: by quasi-inspiration, by compromise, and by scrutiny or ballot; ordinarily it is by ballot. To be elected one must obtain two thirds of the votes. All the details of the voting are so regulated as to prevent all possibility of fraud or mistake. Cardinals are commanded to elect him whom they consider before God as best qualified for the office; nothing more specific is determined.

(*e*) Cardinals are forbidden under pain of excommunication, during the life of the Pope, to canvass for the election of his successor or promise their vote to any one; nor may they before the election enter into any agreement as to what they would do if elected. All such agreements or "capitulations" are null and void *ipso facto*.

(*f*) When one has received two thirds of the votes he is asked whether he accepts the papal dignity and as soon as he gives his consent he becomes the successor of St. Peter with full authority from Christ Himself to rule the Church.

In case a general Council would be in session at the time of the Pope's death it would be suspended at once and the Sacred College would enjoy its ordinary privileges during the vacancy.

13. 3. *Power of the Pope.* The Roman Pontiff possesses the same power of Order as other Bishops but, as successor of St. Peter, he enjoys a primacy of jurisdiction which includes supreme ruling and teaching, legislative, judicial, and coercive power. This jurisdiction is:

(*a*) Supreme. In religious and ecclesiastical matters the Pope has no superior but God; all the members of the Church, moral bodies as well as physical persons, are subject to him. He can dispense from, change, abrogate, all ecclesiastical laws, whether enacted by particular Bishops, Popes, or General Councils.

(*b*) Universal, both as regards subject matter and territory; it extends to the whole Church in all that pertains to faith, morals and discipline in every part of the world.

(*c*) Episcopal; the Pope, Bishop of Rome, is also in a real sense Bishop of the universal Church and can exercise all episcopal functions in every diocese in Christendom.

(*d*) Ordinary, as attached to, and inseparable from, the office of Bishop of Rome.

(*e*) Immediate. Habitually the Pope exercises his authority over the various parts of the Church through the local Ordinaries, but he does not have to do so and he may deal immediately with any one of the faithful or of the Prelates in any province of the Church.

(*f*) Independent of all civil or ecclesiastical authority; neither the College of Cardinals nor General

Councils can set any limits to the Pope's jurisdiction or lay down any conditions for its legitimate exercise.

(*g*) Exclusive. Some of the Pope's powers belong so specially to him that he can not communicate them; others he can and does at times delegate; others again he possesses in common with other Bishops, but he can reserve them to himself so that they become exclusively his. The Code calls major causes the matters which by reason of their importance are reserved to the Pope, either of their own nature, like those which require the exercise of the prerogative of infallibility or of universal jurisdiction, or by positive law, like the election of Bishops, the erection of canonical chapters, the concession of private oratories, etc.

14. 4. *How the Pope's Power Expires.* (*a*) Ordinarily it is by death, to which loss of reason if certain and perpetual is juridically equivalent.

(*b*) The Pope may resign, as some examples show and the Code implies, and the validity of his renunciation would not depend upon acceptance by the Cardinals or by any one else. (Can. 221.)

(*c*) Should the Pope as a private person fall into heresy, publicly and notoriously, he would place himself outside of the Church and *ipso facto* lose his office. (Wernz, II, n. 614.) There is no power on earth that can depose a Pope. (Can. 1556.)

Chapter II

On Oecumenical Councils
(Can. 222-229.)

(Bellarmine, De Controversiis, T. II, De Conciliis; Mazella, De Religione et Ecclesia, Disp. V, Art. V; Wernz, II, n. 842, ff.; Hefele-Leclercq, l. c., vol. 1, Introduction; Catholic Encyclopedia, Council; Dictionnaire de Théologie Catholique, Conciles; Th. Granderath, S. J., Histoire du Concile du Vatican, vol. 1, II; Bruxelles; A. Dewitt, 1907, 1908.)

15. *Preliminary Remarks.* A supreme power in the Church resides also in the episcopal body united to the Pope as to its head; Bishops exercise it chiefly in Councils or Synods.

A Council, as understood here, is an assembly of Prelates convened for the discussion and decision of ecclesiastical matters. The idea of such meetings would naturally be suggested by the example of the Apostles (Acts xv, 6-29), by the evident advantages of united action and the promise of Our Lord to be with His disciples assembled in His name (Matt. xviii, 20); in this sense they are an apostolic or even divine institution, but not an imitation of the civil councils of the Romans (E. Hatch, The Organization of the Early Christian Churches) or of the Grand Sanhedrin of Jerusalem. (J. Reville, Les Origines de l'Episcopat, vol. i, p. 72.)

Councils may be composed of the Bishops of the whole Church or only of those of one province, of several provinces, of a nation, a patriarchate; we have, then, General, Provincial, Plenary, National, or Patriarchal Councils. The Code treats in this

place only of General or Œcumenical Councils, as they alone possess supreme power. There have been twenty of these, beginning with the Council of Nicaea in 325 and ending with the Vatican Council in 1870. Some count but nineteen, because they do not include the one of Constance. To be truly Œcumenical a Council, besides representing the whole Church, must be convoked by, presided over, and confirmed by the Pope.

16. 1. *Convocation of Œcumenical Councils,* their *Transfer, Suspension and Dissolution.*

1°. The Supreme Pastor alone has power to convoke an Œcumenical Council, that is, authoritatively to order a meeting of the Bishops of the whole Church for the settlement of religious questions, to give their assembly a juridical character and their decisions universal binding force. Civil rulers can, as emperors did for the first Councils, issue, even in their own name, an invitation or request to the Prelates in their territory to assemble in the interest of religion, but such an action has no juridical value, and assemblies thus convened remained without special authority until they received papal sanction or endorsement. (Wernz, n. 845; Dictionnaire de Theologie, l. c., p. 651.)

2°. In like manner the Pope and he alone possesses authority to transfer, suspend, or dissolve a General Council. Should the Pope die whilst the Council is in session, it becomes a body without a head and must cease its activity until the new Pontiff orders its continuation. (Can. 229.)

17. 2. *Members of Œcumenical Councils.* (Acta et Decreta Sacrorum Conciliorum Recentiorum, Collectio Lacensis, vol. vii, p. 1058, Freiburg, Herder, 1890; Granderath, l. c., p. 99.)

1°. By the present law the following persons form

part of the regular conciliar assembly with decisive vote in it:

(*a*) The Cardinals of the Holy Roman Church, even those who are not Bishops. The legislator thus formally confirms a privilege established by custom.

(*b*) The Patriarchs, Primates, Archbishops, residential Bishops, even those not yet consecrated. Our Lord having given to the Apostles under St. Peter and in union with him the power of teaching and ruling His flock, the Bishops as their successors must have a share, under the Pope, in the government of the universal Church and therefore a place in General Councils: *Concilia Episcoporum sunt.* This applies at least to Bishops who have jurisdiction over a definite territory and as soon as they obtain it, even before their consecration, because in a council it is the power of jurisdiction, not of Order that they exercise.

(*c*) The Abbots and Prelates Nullius, the Abbots Primate, the Abbots who are superiors of monastic Congregations, the superiors General of clerical exempt religious Orders; superiors of other Orders are not entitled to a seat in the Council unless the Bull of convocation expressly mentions them.

Since the second Council of Nicaea (787) it had been a constant practice to admit into Councils Abbots and heads of monasteries because of the quasi episcopal jurisdiction they exercised and the great influence they had in Church affairs. The Vatican Council did not deem it advisable to withdraw the privilege, but expressly limited it to the superiors of Orders properly so called. (Acta et Decreta, l. c., p. 1059.) The Code extends it to all superiors of clerical exempt Orders or congregations, not to others; the latter would need a special invitation.

(*d*) In regard to Titular Bishops, who have the episcopal character but no jurisdiction, there existed no rule in tradition, as they do not appear till a comparatively recent date. We find a few of them at Trent, where they have a vote like the other Bishops, but some theologians and canonists saw in this a mere privilege whilst according to others they had a strict right to it by virtue of their episcopal consecration. The Vatican Council abstained from settling the theoretical controversy and adopted the practical solution of calling them and giving them a decisive vote. The Code likewise simply states that if invited they shall have a vote without deciding whether or not they have a right to be invited like the residential Bishops. (Granderath, l. c., p. 108.)

(*e*) Theologians and canonists are frequently called to assist the Fathers, but they act only as advisers, not as judges or legislators.

2°. If any one of those who, in accordance with the foregoing rules, may and should assist at the Council is prevented from attending he must send a procurator and justify his absence.

The procurator does not vote in the name of the one whom he represents; if he is himself one of the Fathers of the Council he has only his own vote. If he is not, he may assist only at the public sessions and at the end he has the right to sign the acts of the Council. This was the rule adopted at Trent and maintained at the Vatican in spite of some complaints and of several requests for a change sent to the Pope personally (one of them signed by Rev. Isaac Hecker and Rev. John Ireland, who represented the Bishops of Columbus and St. Paul respectively; Granderath, l. c., p. 127).

3°. The number or proportion of Bishops and other Prelates required for a General Council can

not be strictly defined. Neither Scripture nor tradition enable us to do so. It would certainly suffice that all the provinces of the Church send some representatives, but even this condition was not always fulfilled in Councils considered by all as Œcumenical. Very few of the Western Bishops attended personally the first eight General Synods; for those of Ephesus and Chalcedon, for example, many did not even receive an invitation. The Pope's cooperation supplied the lack of universality in membership.

19. 3. *Presidency of General Councils.* By right the Pope should, and in fact he always did personally, or by delegates preside over Œcumenical Synods, as historical documents show, except perhaps for the first one. It is for him likewise to assign the matter for discussion, prescribe the method of procedure and direct the labors of the Fathers. Each one of the members of the Council has the privilege of proposing questions for consideration with the previous approval and permission of the president.

4. *Confirmation and Promulgation of General Councils.* The decrees of a General Council do not become really obligatory till they have been ratified by the Pope and promulgated by his order. The Bishops are true judges in a synod and not mere advisers, but their sentence lacks an essential element as long as it has not received the sanction of the head of the Church.

Councils at which the Pope assists personally do not need any further ratification; nor, strictly speaking, according to some canonists, those presided over by delegates having definite instructions and faithfully carrying them out. Some of the ancient Councils may not have received any more express confirmation than this; for the future the Code

would demand something more formal and explicit. (Catholic Encyclopedia, l. c.; Dictionnaire, l. c.)

20. 5. *Authority of Œcumenical Councils.* It is supreme both in matters of faith and of discipline, not superior to the Pope's, nor inferior, but essentially the same. The relation of Pope and Œcumenical Council is not one of inferiority or superiority but of intrinsic unity, since the Pope forms an integral part of the Council. Hence the impossibility of appeal from one to the other.

The theory of the superiority of the Council over the Pope appeared for the first time in the troublous days of the Western Schism. It owed its origin neither to heretical tendencies nor to real ill-will towards Rome, but to the desire of finding a remedy for the divisions which desolated the Church. Advocated by Gelnhausen and Langestein in Germany, P. d'Ailly and Gerson in France (L. Pastor, History of the Popes, v. i, p. 182), it soon gained the support of a large number of theologians and of such men as Aeneas Silvius Piccolomini, afterwards Pius II, Cardinal Cesarini, Nicholas of Cusa, and received the formal endorsement of the Councils of Constance (1414-1418, Sess. V; Hefele-Leclercq, Histoire des Conciles, T. vii, p. 210) and of Basle (1431-1443). For the sake of peace Pope Martin V and Eugene IV approved these Councils but only in general terms, *in materiis fidei conciliariter decretis,* and Eugene IV added explicitly, *absque tamen praejudicio juris, dignitatis, et praeeminentiae Sedis Apostolicae.* Martin V in a Const. of May 10, 1418, positively rejects the theory of the superiority of the Council over the Pope. Repeatedly refuted by theologians and condemned by Popes, the error survived nevertheless under different names and forms: Gallicanism in France, Febronianism in Germany, Josephism

in Austria and Northern Italy; it found still a few defenders at the time of the Vatican Council, in Doellinger and his followers. No Catholic may maintain it any longer. (Hefele, l. c., p. 571; Granderath, o. p., vol. ii, p. 322, 327; N. Valois, Le Pape et le Concile, Paris, Picard, 1909, Introduction and passim.)

21. 6. *Utility and Necessity.* General Councils have evident advantages; decisions taken by the Bishops of the universal Church after mature, common deliberation, under the direction of the Supreme Pontiff, must correspond more perfectly to the needs of the Church and may have greater weight in the eyes of the faithful. In times of crisis such gatherings may, in a measure, become necessary. They always remain, however, extraordinary, exceptional occurrences. The Pope's authority suffices to meet all ordinary and even, strictly speaking, extraordinary needs. He is never bound to convene a Council. The attempt made in the fifteenth century to impose upon him such an obligation could not but fail. The decree of Constance, *Frequens Generalium Conciliorum celebratio* (Sess. XXXIX, Oct. 9, 1417), ordering the convocation of a General Council regularly every ten years, tended to nothing less than a transformation in the very constitution of the Church. For reasons of prudence Martin V and Eugene IV carried out its prescriptions, but their successors refused to do so and they successfully maintained the independence of the Roman Pontiff. (N. Valois, o. c.)

Chapter III

Cardinals of the Holy Roman Church

(Can. 230-241.)

(Sebastianelli, De Personis, p. 71, seq.; Wernz, II, n. 61; Thomassin, o. c., P. I, L. II, c. 113-116; Catholic Encyclopedia, Cardinal; Dictionnaire de Théologie, Gardinaux; Ecclesiastical Review, Jan., Feb., 1912.)

22. 1. *Origin and Office.* The term *cardinal* seems to have served in the beginning to designate any ecclesiastic permanently attached to a certain church. Custom limited its application afterwards to the clergy of the principal churches, and finally Pius V, by a Const. of February 17, 1568, reserved it to the chief clerics of the Roman Church, viz., the suburbicarian Bishops, the fifty priests and fourteen deacons in charge of the main churches or titles and deaconries of the city.

The presbyterium of the Bishop of Rome, or ecclesiastics who immediately surrounded and assisted the Pope, would naturally enjoy a special position of honor and authority; their importance increased as the action of the Papacy developed. The Decretal of Alexander III, *Licet de vitanda,* 1179, enhanced their dignity by entrusting to them all the exclusive right of electing the Pope; they became more and more his counsellors and chief assistants in the government of the Church as they are at present, and hence gradually outranked Bishops, Archbishops, and even Patriarchs.

23. 2. *The Sacred College and its Three Orders.*

(Can. 231.) The Cardinals constitute a corporation or moral body called the Sacred College and they are divided into three classes or orders: Cardinal Deacons, Cardinal Priests, and Cardinal Bishops.

At a very early date, some historians say in the third or even the second century, the Popes established in the city of Rome several spiritual centers chiefly for the administration of Baptism and Penance, and when circumstances permitted they built there churches which received the name of *tituli.* Each one of these was under the charge of a priest whom, at least since the sixth century, the documents designate as *presbyter incardinatus* or *cardinalis.* Cardinal Priests numbered 25 under Pope Marcellus (308-309), 28 under Pope Symmachus and at the Roman Synod of the year 499. Their number varied afterwards till Pope, Pius V fixed it at 50. (February 17, 1568.)

To provide for the temporal needs of the poor, Pope Fabian (236-251) divided Rome into seven regions or districts over each one of which would preside a deacon; hence the name of deaconries given to these regions and to the oratories attached to them. Besides distributing alms, preaching and instructing catechumens, the deacons assisted the Pope in liturgical functions or other duties; they too belonged to his presbyterium and received the name of Cardinals. The number of deaconries has varied; since Pius V there have been fourteen.

For some time the Cardinal Priests and Cardinal Deacons formed the senate of the Bishop of Rome, but after the seventh century, if not before, the Popes called also on the Bishops of the neighboring cities or suburban sees to give them regular assistance in the celebration of the divine services and in the government of the Church; these thus became mem-

bers of the Pope's council and are known henceforth as Cardinal Bishops.

This organization continues to the present day. The cardinalitial dignity remains connected with the suburbicarian dioceses, the ancient *tituli* and *diaconiae*. Prelates appointed to suburbicarian sees become Cardinal Bishops; if appointed to one of the presbyteral churches or *tituli* they are Cardinal Priests even though they may have the episcopal character and a diocese under their care; if to one of the deaconries, they are Cardinal Deacons. The late Archbishop of Baltimore was a Cardinal Priest.

24. 3. *Creation of Cardinals.* (Can. 232-235.) 1°. The right of creating Cardinals belongs exclusively to the Roman Pontiff, who exercises it independently of any human authority; usually he conforms to the enactments of his predecessors on the subject and respects long established customs or legitimate privileges, but he is not bound to do so.

2°. As much as possible Cardinals should be taken from all nations, (Trent Sess. XXIV, c. i, de Ref.) and possess in a high degree learning, piety, and prudence. Under the present law they must all be priests; formerly to be eligible it sufficed to have received the four Minor Orders and worn the clerical dress and tonsure for a year.

Regularly those are excluded who were born out of legitimate wedlock even though legitimized by the subsequent marriage of their parents; those who, for promotion to Orders, needed a dispensation from an irregularity or canonical impediment, even though they received it from the Apostolic See and were then raised to the episcopal dignity; persons having a child or grandchild and those related to a living Cardinal in the first or second degree of consanguinity.

3°. The Pope creates Cardinals and publishes their elevation in the Consistory and from this moment they enjoy all the privileges of their rank. This takes place in a secret Consistory or assembly of the Cardinals alone. Some time after, in one to which are admitted other ecclesiastics and even laymen, he confers the red hat upon the new Cardinals and they swear fidelity to the Holy See. Another secret Consistory follows for the ceremony of the "closing and opening of the mouth," which signifies permission to participate in the deliberations of the Sacred College.

Sometimes the Pope creates a Cardinal, that is, officially declares in Consistory that he has raised a certain ecclesiastic to the Cardinalate but does not, for special reasons, publish his name; he "reserves him *in petto.*" The ecclesiastic promoted in this manner does not enjoy the Cardinalitial privileges till after publication, but his seniority will be computed from the moment of creation.

If one of the new Cardinals is absent from Rome at the time of his creation the Pope sends him the red biretta through a special envoy and upon receiving it he must promise under oath to visit the Sovereign Pontiff within a year unless legitimately prevented.

4°. The law against the plurality of offices and benefices applies also to Cardinals and hence, unless for an exception made by the Holy See in a particular case, by their promotion they lose all dignities, churches, benefices, and even ecclesiastical pensions they might possess. Sixtus V, in the Decree *Sanctissimus,* March 16, 1588, from which this Canon has been taken, made an exception for Patriarchal, Metropolitan, and Episcopal churches, which, therefore, Cardinals might retain after receiving their

new dignity. Nothing implies that the Code has introduced a change in this discipline.

25. 4. *Right of Option.* Cardinals have the privilege of applying for advancement in the Sacred College; this is called the right of option. They may ask to pass from one deaconry or presbyteral title to another, from a deaconry to a *titulus,* and from a *titulus* to a suburbicarian see.

1°. Option for another deaconry or another presbyteral title must be made in the Consistory and approved by the Pope. The first choice lies with the senior applicant by ordination and promotion to the Cardinalate.

2°. A Cardinal Deacon may, after ten years in that Order, make option for a presbyteral title, and when he becomes Cardinal Priest he has precedence over all the Cardinals of his Order promoted to the Cardinalate after him. The Code makes no mention of option by a Cardinal Deacon for a suburbicarian see.

3°. When a vacancy occurs in one of the suburbicarian sees Cardinal Priests may make option for it on condition that they be present in Rome at the time or only absent temporarily and on a mission from the Pope. This option must also be made in the Consistory; the first right to make it belongs to the senior Cardinal Priest.

4°. Cardinal Bishops do not any longer have the right of option and passage from one see to another, but the one who becomes dean by seniority becomes by the very fact Bishop of Ostia without losing the diocese which he had already. Thus under the present discipline the see of Ostia is always united to another, that is, to the one which the senior Cardinal Bishop happens to have.

26. 5. *Organization of the Sacred College.* 1°. The Sacred College has a Dean who presides as *primus inter aequales* but possesses no jurisdiction over the other Cardinals. He is the senior Cardinal Bishop, seniority being computed from promotion to a suburbicarian see.

2°. To the Dean succeeds, *ipso jure,* the Subdean or Cardinal next to him in seniority, provided he be, when the vacancy occurs, either in Rome or in his suburbicarian diocese or on a temporary mission confided to him by the Sovereign Pontiff.

6. *Duty of Residence.* (Can. 238.) 1°. The Cardinals' functions require their presence in the Curia; to absent themselves they need the permission of the Roman Pontiff.

2°. This applies also to Cardinal Bishops; they need no authorization, however, to visit their suburbicarian diocese whenever they deem it advisable.

3°. Cardinals who have a diocese but not a suburbicarian one are not bound to reside in the Curia but when they come to Rome they must visit the Sovereign Pontiff and not go away without first obtaining his permission.

27. 7. *Privileges of Cardinals.* (Can. 239.) This Canon gives a list of privileges common to all Cardinals or special to some of them; several others are mentioned in various parts of the Code. (See Can. 600, 1189, 1401, 2227, 2241-2244, etc.)

1°. Privileges common to all Cardinals, which they enjoy from the moment of their promotion in the Consistory:

(i) The privilege of hearing confessions in any part of the world, also those of religious of either sex and of absolving from all sins and censures excepting only the censures reserved to the Holy See

in a most special manner and those incurred by violating the secret of the Holy Office;

(ii) Of choosing for themselves and the members of their household, as confessor, any priest, who obtains jurisdiction by the very fact of this choice and may absolve from all sins and censures excepting only those from which Cardinals cannot absolve, as stated above;

(iii) Of preaching the word of God everywhere;

(iv) Of celebrating or permitting others to celebrate in their presence one Mass on Holy Thursday or three Masses on Christmas night;

28. (v) Of blessing everywhere with the sole sign of the cross and attaching all the indulgences usually granted by the Holy See to rosaries and other prayer beads, crosses, medals, statues, scapulars approved by the Holy See and of imposing the latter without having to inscribe the names;

(vi) Of erecting with a single blessing, in churches and oratories, even private ones, and other pious places, the Stations of the Way of the Cross, with all the indulgences granted to those performing this pious exercise; also of blessing, for the use of the faithful who on account of sickness or other legitimate impediment can not visit the stations of the Way of the Cross, crucifixes with application of all the indulgences attached by the Roman Pontiffs to the pious exercise of the same Way of the Cross;

(vii) Of celebrating on a portable altar not only in their own house but wherever they actually may be; and of permitting that another Mass be celebrated in their presence;

(viii) Of celebrating Mass on the ocean, all proper precautions being observed;

(ix) Of celebrating Mass in any church or oratory in conformity with their own calendar;

29. (x) Of the daily enjoyment of the personally privileged altar;

(xi) Of gaining in their own chapels the indulgences for which a visit to a church or public oratory of the place in which the Cardinals actually sojourn is prescribed; the members of their household share in this privilege;

(xii) Of blessing the people everywhere with the episcopal benediction; but, in the city of Rome, only in churches, pious places, and gathering of the faithful;

(xiii) Of wearing the pectoral cross even over the mozetta like Bishops and of using the mitre and crozier;

(xiv) Of celebrating Mass in any private chapel without any prejudice to the holder of the indult;

(xv) Of celebrating pontifical functions with throne and canopy in any church outside of the city of Rome; the Ordinary being first notified if the church is a cathedral; in Rome they have a right to a throne only in their own churches;

(xvi) Of receiving, withersoever they go, the honors usually bestowed upon the local Ordinaries;

(xvii) Of authenticating in *foro externo* the oral pronouncements of the Pope to which they testify;

(xviii) Of having a private oratory exempt from the visitation of the Ordinary;

(xix) Of disposing freely, even by last will, of the revenue of their benefices, excepting matters mentioned in Can. 1298;

30. (xx) Of consecrating and blessing everywhere churches, altars, sacred utensils, abbots, or performing similar function excepting the consecration of the Holy Oils when the Cardinals have not the episcopal character, observing what should be observed and the prescriptions of Can. 1157, which

prohibits the blessing or consecration of any sacred place without the consent of the Ordinary;

(xxi) Of preceding all Prelates, even Patriarchs and Papal Legates themselves, unless the Legate be also a Cardinal and in his own territory; a Cardinal Legate *a latere* precedes all other Prelates outside of the city of Rome;

(xxii) Of conferring the first tonsure and Minor Orders, provided the candidate has dimissorial letters from his own Ordinary;

(xxiii) Of administering the sacrament of Confirmation, with the obligation of having the names of those confirmed entered in the proper record as prescribed by law;

(xxiv) Of granting an indulgence of two hundred days, to be gained *toties quoties,* in places or institutions and for persons under their jurisdiction or protection; also in other places, but to be gained by those present only and only once on each occasion.

31. 2°. Privileges Special to Some Cardinals. (i) It is the privilege of the Dean of the Sacred College to ordain or consecrate the Pope-elect should he not have received already the priestly ordination or episcopal consecration and on such an occasion the Cardinal uses the Pallium; in the absence of the Cardinal Dean the Subdean takes his place and if he too were absent the privilege would pass to the senior suburbicarian Bishop.

(ii) The senior Cardinal Deacon, in the name of the Roman Pontiff, imposes the Pallium on Archbishops or Bishops having that privilege or their procurators; it is he also who after a papal election announces to the people the name of the new Pontiff.

32. 8. *Powers of Cardinals in Their Titular Churches.* 1°. A Cardinal Bishop has, in the suburbicarian diocese to which he has been promoted and

of which he has taken possession, the same powers as a residential Bishop in his own diocese.

2°. Cardinal Priests and Cardinal Deacons, have in their churches, after taking possession of them, the power of local Ordinaries in theirs, except that they cannot proceed judicially or exercise any jurisdiction over the faithful. They have full authority, however, in matters pertaining to discipline, the correction of morals, and the service of the church.

3°. A Cardinal Priest may exercise pontifical functions and a Cardinal Deacon may assist pontifically in his church with throne and canopy and no one else has the right to do so without his permission. In other churches of Rome they would need the Pope's permission to use the throne and canopy.

33. 9. *Powers of Cardinals During the Vacancy of the Holy See.* During the vacancy of the Apostolic See the sacred College and Roman Curia have no other powers than those granted them in the Const. of Pius X, *Vacante Sede Apostolica,* Dec. 25, 1904. They can not do anything injurious, directly or indirectly to the rights of the Holy See or the Roman Church; they have no authority to correct, modify, or abrogate papal laws. They may attend to urgent matters and the Congregations retain their ordinary faculties; they must use them only, however, for the concession of favors of no great importance except in cases of real necessity.

Chapter IV

The Roman Curia
(Can. 242-264.)

Bouix, De Curia Romana, Paris, 1859; Wernz, II, n. 620, 637; F. M. Cappello, De Curia Romana, vol. i, F. Pustet, 1911; N. Hilling, Procedure of the Roman Curia, New York, 1909; M. Martin, S.J., The Roman Curia, Benziger, New York, 1913; Blat, II, p. 198; Dictionnaire de Théologie Catholique, Cour Romaine; Catholic Encyclopedia, Roman Curia.)

34. 1. *Origin and Development.* To govern a society which counts millions of members and extends all over the world, the Pope needs numerous and well organized assistants; these form his court or curia. Like the Church herself, the Roman Curia has gradually expanded and perfected its organisms to meet the requirements of succeeding ages.

During the first three centuries the Pope's curia differs little from that of any other Bishop; he has to help him his clergy or presbytery, particularly the priests in charge of the twenty-five *tituli,* the seven deacons presiding over the *Diaconiae,* and the seven *notarii* appointed to write the Acts of the Martyrs and attend to the official correspondence. (Liber Pontificalis, ed. Duchesne, T. I, p. 147; Ducange, Glossarium ad Scriptores Mediae et Infimae Latinitatis, Notarii Regionarii.) The neighboring Bishops would also attend occasionally the meetings or synods of the Roman clergy.

After the edict of pacification these synods became more frequent and soon served as the chief agency for the government of the universal Church. The

Popes invited to them not only the Bishops of the province of Rome but also those of central and lower Italy and of the whole West, and they referred to them all matters of importance; for the affairs of ordinary administration they employed the *notarii,* the *defensores,* the *judices palatini,* and other officials.

The synods which had flourished particularly under Leo IX and his immediate successors (1049-1130) commenced to decline towards the middle of the twelfth century and soon were abondoned. Henceforth the Popes decided the *causae majores* in the consistories or meetings of Cardinals held several times a week or even daily. About the same time appear new officials and new departments in the curia: the Cardinal Chancellor, the Carmerarius, who has charge of the papal finances, the college of Apostolic Penitentiaries, who attend to penitential matters and dispensations for the *forum internum,* the Apostolic Datary for the expedition of dispensations in *foro externo,* the Secretariate of Briefs, the *Signatura justitiae,* etc.

As the number of questions submitted to the Holy See for decision increased, it seemed necessary to divide the work and commit the examination of the various categories of cases to men particularly competent in the matter. Some steps had already been taken in that direction, but Pope Sixtus V, adopting a general measure, established by his Const. *Immensa* of Jan. 22, 1588, fifteen Congregations between which he distributed all the affairs usually brought before the Holy See.

This organization proved serviceable and has been maintained ever since. In the course of time, however, the jurisdiction attributed originally to the Congregations underwent important changes. Some

of them became overburdened and others had too little to do; often also they invaded one another's province, which resulted in confusion and uncertainty as to each one's competence. Pope Pius X remedied these defects by his Constitution *Sapienti Consilio* of June 29, 1908, and the Instructions which followed and completed it. Only a few changes have been introduced since by the Code or particular papal decrees.

35. 2. *Departments and Members of the Curia.* As organized at present the Curia consists essentially of Congregations, Tribunals and Offices; its members are divided into three classes: Cardinals; Prelates, including titular Patriarchs, Archbishops, Bishops and other ecclesiastics upon whom the Holy See confers that title; then come lower officials, like Advocates, Notaries, Procurators, Expeditors, Agents.

The Code does not mention the various Commissions, like the Biblical Commission, the Commission for the interpretation of the Code, etc., as not being integral parts of the Curia, and it has only passing references to Consistories, which have ceased since the institution of Congregations to have an active part in the government of the Church and remain little more than solemn ceremonial acts.

36. 3. *General Norms.* (Can. 243-245.) 1°. The discipline and the manner of proceeding in each Congregation, Tribunal, and Office are determined by the general and particular laws which the Roman Pontiffs have laid down or may lay down in future for that purpose and which must be faithfully observed.

Together with the Const. *Sapienti Consilio,* Pius X published the "Lex Propria Sacrae Romane Rotæ et Signaturae Apostolicae," in which he defines the constitution, competency, and mode of procedure of

these Tribunals; he added under the title of "Ordo Servandus in S. Congregationibus, Tribunalibus et Officiis Romanae Curiae" first general rules, *Normae Communes,* applying to all departments of the Curia, then a little later (Sept. 29, 1908) special rules, *Normae Peculiares,* concerning each one of them in particular. (Capello, l. c., p. 370, 476.) The same Pontiff approved and confirmed more detailed and more complete regulations for the Tribunal of the Rota (Aug. 4, 1910; A. A. S., 1910, p. 783) and of the Signatura (March 6, 1912; A. A. S., 1912, p. 187.)

2°. One of the special duties of the members of Congregations, Tribunals, or Offices is that of secrecy, which all must observe, as explicitly stated in the *Normae Generales* (c. iii) and enacted by the Code. The extent and gravity of this obligation varies with the different departments; it binds most strictly the members of the Holy Office as decreed by Clement XI (Dec. 1, 1709) and by Clement XIII (Feb. 1, 1799; Blat, l. c., p. 201) and about as strictly the members of the Consistorial Congregation, according to the *Normae Peculiares* (c. vii, art. ii), which prescribe for them a special form of oath.

3°. The Congregations, Tribunals, or Offices should not decide any grave matter or do anything out of the ordinary without having previously notified the Sovereign Pontiff.

All favors, whether granted by rescript or otherwise, all decisions, need papal approval, except those for which the Moderators had received special powers; this rule does not apply to the sentences of the Rota or Signatura.

4°. If any controversy arises about competency between the Congregations, Tribunals, or Offices, a

committee of Cardinals, designated each time by the Sovereign Pontiff, decides the question. Formally the Consistorial Congregation had authority to settle such differences.

It may be noted here that, as explicitly declared in the *Ordo servandus,* any Catholic may have recourse to the Offices of the Curia either personally or through a Procurator or Advocate.

ARTICLE I

THE SACRED CONGREGATIONS
(Can. 246-257.)

(Catholic Encyclopedia, Roman Congregations; Dictionnaire de Théologie, Congrégations Romaines.)

37. Among the departments of the Roman Curia, the Congregations occupy the principal place. Through them does the Pope habitually exercise administrative and executive power, most of the judicial affairs being reserved to the Tribunals and some special matters to the Offices.

The Congregations are composed of a certain number of Cardinals, who form the deciding board; they have to assist them specialists, canonists, and theologians, known as Consultors, who prepare the matter for deliberation, and other Officials like the *Minutantes,* the *Amanuenses,* the *Apparitores.*

Each Congregation has a Prefect and Secretary, called in some cases Assessor, Substitute, with one or several Subsecretaries. These are the major officials; they constitute the *Congresso,* which may adjudicate the less important or less difficult cases. The *Normae* describe in detail this internal organization and the mode of procedure. (Blat, l. c., p. 210; Maroto, n. 817.)

The number of Congregations has varied; Sixtus V established fifteen, his successors added new ones or suppressed some of them according to needs. The Constitution *Sapienti Consilio* retained eleven; since then Pope Benedict XV united the Congregation of the Index to the Holy Office (March 25, 1917) but he set up a distinct Congregation for the Oriental Churches.

I. THE HOLY OFFICE
(Can. 247.)

38. 1. *Origin and Organization.* The Holy Office as a Congregation distinct from the ancient Tribunal of the Inquisition owes its origin to Pope Paul III (Bull, *Licet ab initio,* July 21, 1542), who instituted it for the defense of faith and morals against heretics. It has been known also under the name of Roman and Universal Inquisition, but in order to avoid confusions Pope Pius X used only the term Holy Office in the Const., *Sapienti Consilio,* as does now the Code.

The Popes reserve to themselves the presidency of this Congregation and one of the Cardinals has the title of secretary. The other major officials are the Assessor, who practically discharges the functions of secretary, and the Commissary, always a Dominican, who conducts the processes in criminal cases.

39. 2. *Competency.* Under the present legislation, which modifies in several important respects the former discipline, four categories of cases belong to this Congregation, which acts also as a Tribunal:

1°. Judicial Matters. The Holy Office proceeds against offenses reserved to it according to its own law, i. e., against heresy or offenses which cause suspicion of heresy, such as knowingly assisting in the spread of heretical doctrines (Can. 2316), contract-

ing marriage with the promise of having children brought up outside of the Catholic Church, having one's children baptized by a heretical minister or placed under non-Catholic tutors (Can. 2319). The Holy Office takes up these cases not on appeal only but also in the first instance if they are brought to its court directly.

2°. Matrimonial Cases. This Congregation has exclusive jurisdiction in whatever pertains, directly or indirectly, in law or in fact, to the so-called Pauline Privilege, the impediments of disparity of cult and of mixed religion and dispensations from them. All such matters must be submitted to its judgment, but it may refer them to another Congregation, for example to that of the Sacraments, or to the Tribunal of the Rota, if this seems advisable and the nature of the case permits.

3°. Condemnation of books. As said before, Pope Benedict XV, by the Motu Proprio *Alloquentes* of March 25, 1917, united the former Congregation of the Index to that of the Holy Office, whose province it is therefore at present to examine diligently the books denounced to it, to forbid them if deemed advisable and grant dispensations from these prohibitions; also officially to find out in the best possible manner whether writings of any kind dangerous to faith or morals are being circulated, and to remind Ordinaries of the solemn duty imposed upon them to condemn pernicious publications and to denounce them to the Holy See. (Vermeersch, De Prohibitione et Censura Librorum, Romae, 1906; Periés, L'Index, Paris, 1898; Boudinhon, La Nouvelle Législation de l'Index, Paris, 1899; Hurley, Commentary on the Present Index Legislation, Dublin, 1908.)

4°. Eucharistic fast. All questions concerning the Eucharistic fast for Priests who celebrate belong

to this Congregation exclusively, not to the Congregation of the Sacraments. This applies, as the text of the law clearly indicates, only to Eucharistic fast in relation to the minister of the Holy Sacrifice.

II. CONSISTORIAL CONGREGATION (Can. 248.)

40. 1. *Origin and Organization.* Sixtus V established this Congregation "for the erection of churches and for consistorial provisions"; it was to prepare matters which came before the Consistory or assembly of Cardinals presided over by the Pope, for enactment or at least solemn promulgation; hence the name given to it. Its organization has undergone a gradual transformation and become very similar to that of the Holy Office.

At present it has the Pope as Prefect; three Cardinals belong to it *ex officio* the Secretary of the Holy Office, the Prefect of the Congregation of Seminaries and Universities, and the Secretary of State, besides those appointed by the Sovereign Pontiff. Among the Consultors attached to it are always numbered the Assessor of the Holy Office, the Secretary of the Congregation for Extraordinary Ecclesiastical Affairs, and the Secretary of the Congregation of Seminaries and Universities.

41. 2. *Competency.* 1°. This Congregation continues to have for its function the preparation of matters to be treated in Consistories; and, moreover, in countries not subject to the Propaganda, it has authority to establish new dioceses and provinces and to erect new chapters, both cathedral and collegiate; to divide already existing dioceses, to propose Bishops, Administrators Apostolic, Coadjutors and Auxiliary Bishops for appointment, to make the canonical investigations as to the fitness of candidates

and to examine them. For countries, however, in which these matters must be settled with the civil governments special provision is made in Canon 255.

2°. To this Congregation belongs likewise whatever relates to the constitution, preservation, and state of the dioceses; consequently it exercises supervision over Bishops in regard to the fulfillment of their obligations, examines the reports presented by them on the state of their respective dioceses, orders apostolic visitations and reviews those previously made. Matters in these reports or accounts of visitations calling for some discussion or decision it refers to the competent Congregations.

III. CONGREGATION OF THE SACRAMENTS (Can. 249.)

42. 1. *Origin and Organization.* It was Pope Pius X who instituted this Congregation, assigning to it as its special sphere of activity the whole legislation on the discipline of the Sacraments formerly divided between the various departments of the Curia.

Like most of the Congregations, it consists of several Cardinals, one of whom exercises the function of Prefect, of a Secretary, three Subsecretaries, Consultors, and other inferior Officials.

43. 2. *Competency.* 1°. In general this Congregation deals with whatever relates to the discipline of the seven Sacraments. Questions of doctrine closely connected with faith remain within the province of the Holy Office and also the disciplinary dispositions regarding the Pauline Privilege, as said before, and the impediments of disparity of cult and of mixed religion. The Congregation of Rites retains its exclusive authority over what pertains to

the rites and ceremonies observed in the confection, administration and reception of the Sacraments.

2°. This Congregation, therefore, has power to issue decrees and grant dispensations in all disciplinary matters concerning Matrimony and the other Sacraments and also the celebration of the Holy Sacrifice, those cases only being excepted which law expressly mentions. Thus it grants dispensations regarding marriage impediments of the external forum, even in countries subject to the Propaganda, regarding irregularities, the age, the title, the day for ordinations, the time, place and other conditions for the reception of the Holy Eucharist or the celebration of Holy Mass; it may dispense the faithful from the Eucharistic fast, even religious but not priests; it permits the reserving of the Blessed Sacrament in oratories which would not have that right, the celebration of the Holy Sacrifice in private oratories, in the open air, on ships, on Holy Thursday; it may decree the separation of spouses, the legitimation of children, etc.

The Code expressly limits its jurisdiction as to matters in regard to cases of the internal forum reserved to the Holy Penitentiary and those requiring a judicial treatment reserved to the Rota, as to places in regard to countries subject to the Propaganda and as to persons in regard principally to religious.

3°. This Congregation and it alone is competent (*a*) to pronounce on the fact of the consummation of marriage, the existence of the required causes for dispensations in such cases and all connected questions. If deemed advisable it may also submit these cases to the Tribunal of the Rota for a more thorough or perhaps more strictly juridical discussion.

(*b*) To it may also be reported cases of nullity of marriage, but if in its judgment they call for

more accurate investigation or more complete information they must be remitted to the competent tribunal of first instance.

(*c*) It has likewise authority to treat of the obligations attached to Major Orders and inquire into the validity of Ordinations or refer such questions to the competent tribunal. And so on for all the Sacraments.

IV. CONGREGATION OF THE COUNCIL. (Can. 250.)

44. 1. *Origin.* Pope Pius IV, fearing lest the reform measures of the Council of Trent should remain without effect, appointed for their enforcement a commission of eight Cardinals, giving them all the necessary power therefor. (*Alias nonnullas,* Aug. 2, 1564.) Not long after they received from Pius V the mission to interpret the Tridentine Decrees and Sixtus V organized them into a Congregation, "for the interpretation and execution of the Council of Trent"; hence the name Congregation of the Council.

In the course of time, whilst in other respects the competency of this Congregation was extended, it ceased to have the exclusive right of interpreting the Council. By the Const. *Sapienti Consilio,* as officially declared (Consist. Feb. 11, 1911). each Congregation enjoyed that privilege within the limits of its particular jurisdiction, and to the Congregation of the Council, which retained its old name, was committed the care of the universal discipline of the clergy and of the Christian people.

45. 2. *Competency.* 1°. This Congregation has no special authority to interpret the disciplinary laws of the Church now contained in the Code, this function being exercised by the Commission ap-

pointed for that purpose; but it continues to have the supervision of the universal discipline of the secular clergy and of the Christian people.

2°. Consequently it has charge of the observance of the precepts of Christian life, which includes both divine and ecclesiastical obligations, and it may, for good reasons, dispense the faithful from the laws of the Church; it must care for pastors and canons, for pious sodalities and unions even though they may depend on religious as being founded by them or in their churches; for pious legacies, such as foundations for Masses or any religious works; for pious institutions, like hospitals belonging to the Church; for ecclesiastical property whether personal or real; for Mass stipends, offices, and benefices, diocesan tributes or taxes imposed by the episcopal curia in accordance with canonical prescriptions.

To this Congregation remains reserved the faculty of dispensing from conditions required for the acquisition of benefices, *v. g.* age, academic degree, etc. This applies only, however, to appointments belonging to the Bishop; for others recourse should be had to the Dataria or to the Consistorial Congregation. It is also the Congregation of the Council which has exclusive authority to make a compromise with persons who have obtained possession of ecclesiastical property and to give permission to the faithful to acquire ecclesiastical property usurped by civil governments. This holds also when the property belongs to a religious Order.

3°. All that concerns ecclesiastical immunity, whether personal, real, or local, falls within its province, also the settlement of controversies about precedence, except those which come under the jurisdiction of the Congregation of Religious or of the Ceremonial.

4°. It has received charge in countries not subject to the Propaganda of whatever pertains to the celebration of Councils, provincial or plenary, and to the examination of their Acts or Decrees; likewise of what concerns the meetings or conferences held by Bishops for the discussion of ecclesiastical matters outside of regular councils.

5°. Moreover, this Congregation is competent to settle in a disciplinary way all controversies about matters within its jurisdiction. If it considers that certain cases require a formal judgment and judicial process it refers them to the proper tribunal, generally the Rota.

V. CONGREGATION FOR THE AFFAIRS OF RELIGIOUS. (Can. 251.)

46. 1. *Origin.* Sixtus V instituted, May 25, 1850, a Congregation for the affairs of Bishops; some time before Gregory XIII had established one for the affairs of Religious. In 1601 Clement VIII united the two in one which became known as the Congregation of Bishops and Regulars and continued in that form till Nov. 3, 1908, when, by the Const. *Sapienti Consilio,* Pius X restored the Congregation for the affairs of Religious, leaving those of Bishops under the care of various departments of the Curia.

2. *Competency.* 1°. This Congregation has special and exclusive authority over all Religious of either sex, whether with solemn or simple vows, and over persons without vows of any kind but living in common like Religious; also over secular Third Orders, but only over the Order and the members or Tertiaries as such, not otherwise. In missionary countries, however, Religious as missionaries are subject to the Propaganda.

In regard to these persons it is competent in all that pertains to the government of the communities, like the constitutions, customs, rights and duties of superiors; to discipline, observance of rules and of religious perfection, etc., to the studies of Religious, not, *v. g.,* those of Seminarians who might be entrusted to them; to their temporal property, except in what belongs to the Congregation of the Council (Can. 250, § 2); to privileges. The Code does not mention here Ordinations, as the *Normae Peculiares* did, (C. I, 1, e.)

47. 2°. It can consequently decide in a disciplinary way all controversies among Religious or between Religious and Seculars about matters within its jurisdiction.

If the case calls for judicial treatment it should be referred to the competent Tribunal, and certain matters remain reserved to the Holy Office or to the Congregation of the Council, even in regard to Religious. (Can. 247, 250, § 2.)

When the dispute is between a Religious and a Secular this Congregation may, either *ex officio* or principally at the request of the interested party, remit the affair to another Congregation or Tribunal.

3°. Finally, to this Congregation is reserved the concession to Religious of dispensations from the common law, except the law of the Eucharistic fast for Priests, from which the Holy Office alone can exempt. The Code does not mention here Third Orders, because this Congregation does not grant these dispensations to their members. Does it grant them to the members of communities that take no vows? The term used is *sodalibus religiosis,* which strictly speaking designates religious with vows. (Can. 488, 7°; cf. Blat, 1. c., p. 224; Cappello, 1. c., p. 219.)

VI. CONGREGATION OF THE PROPAGANDA. (Can. 252.)

48. 1. *Origin.* This Congregation had its origin in the appointment by Gregory XIII (1572-1585) of a commission of three Cardinals for the purpose of promoting the return of schismatics to Catholic unity and preserving Greek Catholics from falling into schism. Gregory XV raised this commission to the dignity of a Congregation (*Inscrutabili Divinae,* June 22, 1622,), assigned to it thirteen Cardinals with two more Prelates, a secretary, and a consultor, and entrusted to them all that pertains to the propagation of the faith throughout the world. The more serious affairs they were to refer to the Holy See, but all the others they might decide according to their prudence. They had the supervision of all missions and power to send missionaries, to enact regulations, settle controversies and take any measures they deemed necessary for the success of their work.

The Constitution *Sapienti Consilio* restricted in several respects the jurisdiction of the Propaganda but without changing its character.

49. 2. *Present Competency.* 1°. It continues to have the direction of the Church's activities among the infidels, appoints missionaries and changes them when judged advisable, takes cognizance of all questions affecting the interests of missions, enacts necessary or opportune regulations and enforces them.

2°. In countries subject to its authority the holding of Councils and examination or recognition of their decrees are reserved to it.

3°. Territorially its competency is limited to missionary countries, *i. e.,* to districts that have not yet

a regular hierarchy or the division into dioceses and provinces with Bishops possessing ordinary episcopal powers.

Some countries remain under its jurisdiction for some time after the organization of the hierarchy because of special conditions and their yet imperfect ecclesiastical development. Thus the United States, Canada, England, Scotland, Ireland, and Holland had depended on the Propaganda till the year 1908.

Vicariates Apostolic and Prefectures Apostolic, even though they form part of provinces governed by the common law, retain their status of missionary districts until they become dioceses. (Consist. Nov. 12, 1908, A. A. S., I, p. 148.)

Societies, like the Paris Foreign Mission Society, and Seminaries, like the Foreign Mission Seminary of America at Maryknoll, which have for their exclusive purpose the training of missionaries for foreign countries, are also under the jurisdiction of the Propaganda, particularly in regard to rules, administration of temporal property, and special concessions they may need for the ordination of their candidates.

4°. As to subject matter the jurisdiction of the Propaganda, is limited in a threefold way: it must refer to the competent Congregations, that is, to the Congregations of the Holy Office, of the Sacraments, or the Sacred Rites respectively, questions pertaining to faith, to marriage, or to the general ritual rules, their enactment or their interpretation.

5°. As to persons, the Propaganda possesses only limited authority on Religious employed in its territory. As missionaries, in regard to what pertains, for instance, to the administration of the Sacraments and the exercise of the sacred ministry generally, they come under its rule, but not as Religious, in

what, *v. g.* relates to their training, discipline, ordinations.

VII. CONGREGATION OF SACRED RITES. (Can. 253.)

50. 1. *Origin.* Sixtus V established (January 22, 1587) a Congregation *Pro Sacris Ritibus et Caeremoniis* with mission to promote the observance of sacred rites and ceremonies, amend liturgical books, revise the offices of the saints, conduct processes of beatification and canonization, attend to the reception of Princes, settle controversies about precedence, and decide all questions pertaining to rites and ceremonies. Soon after this Congregation was divided and a special one instituted *Pro Caeremoniis.* By the Motu Proprio *Quae in Ecclesiae bonnum* of Jan. 29, 1906, Pius X united the Congregation of Indulgences and Sacred Relics to the Congregation of Rites, but in the Const. *Sapienti Consilio* he detached again the section on Indulgences which passed to the Holy Office and later on to the Holy Penitentiary, and he also limited the jurisdiction of the Congregation of Rites as to questions of precedence. The Code has introduced no new changes of importance.

51. 2. *Competency.* 1°. This Congregation has the right of supervising and decreeing all things pertaining proximately to the rites and ceremonies of the Latin Church. It may, then, enact laws within its own province and they will have binding force on all, at least after approval by the Holy See. Its authority does not extend to Oriental Rites, nor to matters connected only in a remote manner with Liturgy, such as questions of precedence or others of like nature. These come now under the jurisdiction of the Congregations of the Council, of the

Sacraments, or of the Ceremonial, if treated in a disciplinary way; under that of the Rota, if they require the judicial form.

2°. Its function, therefore, is chiefly to watch over the exact observance of the sacred rites and ceremonies in the offering of the Holy Sacrifice, the administration of the Sacraments, the celebration of the divine services and all that concerns worship in the Latin Church. It can grant dispensations for legitimate reasons, confer distinctions and honorary privileges, whether personal and temporary or local and permanent, in matters related to rites and ceremonies, *v. g.* the privilege for canons to wear certain insignia, for a diocese to celebrate the feast of a certain saint; and it must see that in all this abuses do not creep in. Here, too, its powers have been restricted to matters immediately related to rites and ceremonies.

3°. It has always been the function of the Congregation of Rites since its origin to make the necessary preparations for canonizations; the form of procedure for this is described in detail in the fourth book of the Code. (Can. 1999-2141.)

Clement IX in establishing the Congregation on Indulgences and Relics (*In ipsis,* July 6, 1669) defined its scope as being to correct and prevent abuses, to solve difficulties proposed, to examine and authenticate relics recently found. These duties devolved on the Congregation of Rites, in 1904. In 1917 the section on Indulgences was attached to the S. Penitentiary.

It may be added here that the authority of this Congregation has no territorial or personal limitations; it extends to countries subject to the Propaganda and affects also Religious.

VIII. CEREMONIAL CONGREGATION. (Can. 254.)

52. It retains the rights hitherto attributed to it by the Constitution *Sapienti Consilio* and previous legislation. To it, therefore, appertains the regulating of the ceremonies to be observed in the papal chapel and court and in the sacred functions performed by Cardinals outside the pontifical court, for example in their own titular churches. It also takes cognizance of questions regarding the precedence of Cardinals and Legates sent by the Apostolic See to the various nations.

IX. CONGREGATION FOR EXTRAORDINARY ECCLESIASTICAL AFFAIRS. (Can. 255.)

53. 1. *Origin.* Formerly when questions of exceptional gravity would arise the Popes appointed a special commission of Cardinals to examine them. In accordance with this custom Pius VI created in 1793 a Congregation for the extraordinary affairs of France. In 1805 Pius VII changed it into the Congregation for extraordinary ecclesiastical affairs, giving it a more general name and scope. So far it retained its original temporary character, but in 1827 it became a permanent institution and a regular Congregation. The Sovereign Pontiffs would refer to it matters requiring special treatment, particularly those of a mixed nature affecting the relations between the Church and civil governments. In the course of time they placed also under its care certain countries like Russia and the states of South America which, owing to peculiar circumstances, were not ruled by common law nor subject to the Propaganda. This lasted till 1908, when Pius X transferred those countries to the Propaganda and

decreed that the Congregation for extraordinary ecclesiastical affairs would in future concern itself exclusively with matters submitted to its examination by the Supreme Pontiffs through the Cardinal Secretary of State, who acts as its Prefect.

2. *Competency.* Under the present discipline this Congregation continues to handle the cases which the Pope turns over to it through the Secretary of State, but it has, besides, authority to constitute or divide dioceses and appoint Bishops in those parts of the Church in which such matters have to be treated with the civil governments.

X. CONGREGATION OF SEMINARIES AND UNIVERSITIES. (Can. 256.)

54. 1. *Origin.* The Congregation "For the Roman University" established by Sixtus V had under its charge not only the Roman Colleges but also the Universities at Bologna, Paris, Oxford, Salamanca and others enjoying papal protection. In 1821 Leo XII created a "Congregation of Studies" to exercise supervision over all colleges and universities, public and private, in the papal dominions. When after the events of the year 1870 its activities had ceased in these provinces, it assumed the functions of the old Congregation of Sixtus V, which had never been abrogated, and thus acquired supreme control of all Catholic universities. The Constitution *Sapienti Consilio* formally sanctioned what had existed for some time before.

Whilst Universities thus depended on the Congregation of Studies, Seminaries came within the province of the Consistorial Congregation. Pope Benedict XV decided to place them under the same department of the Curia. By a Motu Propio of

Nov. 4, 1915, he created the "Congregation of Seminaries and Universities," to which he transferred the powers of the Congregation of Studies and those exercised by the Consistorial Congregation over Seminaries. In order not to sever all connections with the latter, the new Congregation was to count among its members the Cardinal Secretary of the Consistorial and its Assessor among its consultors.

2. *Competency.* 1°. As formerly the Consistorial, this Congregation watches over all that pertains to the government, discipline, temporal administration and studies of Seminaries, except those in charge of the Propaganda.

2°. Like the former Congregation of Studies, it has the supervision of the administration and studies in Universities subject to the authority of the Church, including those entrusted to members of a religious Order. It examines and approves new institutions, grants powers to confer the academic degrees and prescribes the requisite conditions for this; in the case of a man of eminent learning it may itself confer the degree.

XI. CONGREGATION FOR THE ORIENTAL CHURCH. (Can. 257.)

55. 1. *Origin.* The Congregation of the Propaganda as established by Gregory XV (Const. *Inscrutabili,* June 22, 1622) had two sections, one for the missions in general, the other for the affairs of the Oriental Church. Pope Pius IX, by the Bull *Romani pontifices* of Jan. 6, 1862, gave to the sections for the Oriental Rites a complete organization, making it a Congregation in itself; still it had no distinct Prefect and remained connected with the Propaganda. The Const. *Sapienti consilio* did not change

this condition. Pope Benedict XV, knowing that it was distasteful to Eastern Catholics and wishing to show his regard for, and his appreciation of the importance of, the Oriental Church, created for them, by the Motu Propio *Dei Providentis* of May 1, 1917, a special Congregation which would have the Roman Pontiff himself for its Prefect.

2. *Competency.* 1°. To this Congregation belong exclusively all the affairs of whatever kind that pertain to persons, the discipline or rites of the Oriental Church, even those of a mixed nature which affect also a Latin either by reason of the matter or of the person involved, as, for example, a marriage between a Latin and an Oriental, the celebration of Mass by a Latin priest in a church of one of the Oriental rites.

2°. It possesses, consequently, for the Churches of the Oriental rites all the powers which the other Congregations enjoy for those of the Latin, excepting only the ones reserved to the Holy Office as stated in Canon 247.

3°. It decides controversies only in a disciplinary way; those which call for the judicial form it remits to the tribunal of its own choice or creation.

ARTICLE II

THE TRIBUNALS OF THE ROMAN CURIA
(Can. 258-259.)

56. Canonists define the Tribunals of the Roman Curia as "assemblies of Prelates and Cardinals possessing jurisdiction in the internal, or in the strictly judicial forum." They are three in number: The Poenitentiaria, the Roman Rota, and the Signatura Apostolica.

I. THE SACRED PENITENTIARY. (Can. 258.)

(Chouet, La Sacrée Pénitencerie Apostolique, Lyon, 1908; Canoniste Contemporain, Février, 1909, p. 73; Sept. 1915, p. 486; Cappello, o. c., I, p. 354.)

57. 1. *Origin.* Little is known of the Apostolic Penitentiary as a distinct department of the Roman Curia before the thirteenth century. In the twelfth the development of canon law, a more thorough understanding of the nature of jurisdiction and progress in the exercise of papal power, had led to a multiplication of reserved cases which must have rendered necessary about that time the creation of a special tribunal for their absolution. Soon after the names of the *Majores Poenitentiarii* appear on various documents with some indications about their functions. These, somewhat obscure and indefinite at first, become gradually better determined. In the sixteenth century the Popes had restricted them almost exclusively to matters of the internal forum; in the nineteenth, under the pressure of circumstances, certain matters pertaining to the external forum had been committed again to the Penitentiary, but the Const. *Sapienti consilio* withdrew them once more from its jurisdiction.

58. 2. *Competency.* At the present time the Tribunal of the Penitentiary includes two sections: the Penitentiary proper and the section for Indulgences.

1°. The Penitentiary has jurisdiction only on matters concerning the internal forum, both sacramental and non-sacramental; it grants, therefore, favors for the internal forum alone, absolutions from sins and censures, dispensations of various kinds, as from occult marriage impediments or irregularities, commutations, condonations; it discusses also and decides questions of conscience.

All Catholics may have recourse to the Sacred Penitentiary either directly or through an intermediary, usually the confessor. The letter may be written in Latin, Italian, English, French or any other language and addressed: Sacra Penitenziaria, Via del S. Officio, Roma. The Petition does not ordinarily contain the name of the parties concerned but fictitious ones, Titius, Caia, etc. It must, of course, clearly indicate the address to which the answer is to be sent. (Cappello, o. c., p. 366.)

2°. Indulgences. Clement IX, by his Const. *In ipsis Pontificatus* of July 6, 1669, established a special Congregation called that of Indulgences and Relics, with the mission of prohibiting the publication of false, apocryphal, and improper indulgences; of examining those already published and rejecting unworthy ones. A Motu Propio of Jan. 28, 1904, united this Congregation to that of the S. Rites, but the Const. *Sapienti Consilio* detached it again and connected it with the Holy Office. Finally the Motu Proprio *Alloquentes* of March 25, 1917, confirmed afterwards by the Code, committed all that pertains to the use and concession of Indulgences to the S. Penitentiary, the Holy Office retaining exclusive authority in all dogmatic questions regarding either indulgences or new prayers and devotions.

II. THE SACRED ROMAN ROTA. (Can. 259.)

(Catholic Encyclopedia, Rota; Cappello, o. c., p. 369; Canoniste Contemporain, Avril, 1914, p. 197; Mai, 1914, p. 258.)

59. Under the present discipline all cases requiring judicial procedure must be referred to the Sacred Roman Rota or to the Apostolic Signatura. The Code defines the competence, attributions, organization and mode of action of these two tribunals in

the fourth book (Can. 1598-1605), which treats of judgments. Here it will suffice to say a few words on their origin and place in the Roman Curia.

The practice of bringing to Rome matters of special gravity has always existed in the Church. In the beginning the Popes would discuss them in the assembly of their clergy or presbyterium and later on in Consistory with the Cardinals. But in the twelfth century cases of appeal to the Holy See had grown so numerous that the Pontiffs found it impossible to give much personal attention to them; therefore they committed this care to some of their chaplains or other prelates who would hear the parties (hence the name of Auditors), gather the evidence and report to the Pope. At first the Auditors were appointed for each case, with merely delegated and transitory power; gradually their function became a permanent and habitual one and they received authority to pronounce the sentence. By the end of the thirteenth century they form a distinct college with the official title of *Auditores Generales causarum Sacri Palatii.* They do not constitute as yet a tribunal with definitive jurisdiction, but this comes soon through the action of several Popes, Nicholas III, Martin IV, Clement V (1307), John XXII (Bull *Ratio Juris,* 1331).

The Rota, as this tribunal is called at least since 1336, reached its highest point of activity and influence in the fifteenth century. After the institution of the Roman Congregations in the sixteenth it lost much of its importance. In modern times it had become almost exclusively a civil tribunal for the Papal States, so that by the loss of the temporal power it remained practically without function.

Pope Pius X, in the reorganization of the Roman Curia, restored the Rota to its former place of au-

thority and usefulness. "As the Tribunal of the Sacred Roman Rota," he says in the Const. *Sapienti Consilio,* "which in former times was an object of universal praise, has in these times through various causes nearly ceased to judge, the result has been that the various Congregations are burdened excessively with forensic cases. To meet this evil . . . we ordain that for the future contentious cases, civil as well as criminal, requiring judicial procedure with trial and proofs, shall not be received or taken cognizance of by the Sacred Congregations . . . but shall devolve to the Tribunal of the Sacred Roman Rota, which we do by these letters again call into exercise."

Under the present discipline the Rota decides, in the second instance, on appeal, cases tried by Ordinaries; in the last instance cases decided in the second or further instance either by the Rota itself or by some other tribunal, provided they have not passed into *res judicatae;* it also pronounces in the first instance on cases referred to it by the Pope either *motu proprio* or at the request of the parties themselves. (Can. 1599.)

III. THE APOSTOLIC SIGNATURA

(Cappello, o. c., p. 452; Catholic Encyclopedia, Roman Curia; Canoniste Contemporain, Juin, 1914, p. 334.)

60. The origin of the Signatura is similar to that of the Rota and dates from about the same period.

The Popes must have needed at a very early date officials who would receive the petitions of various kinds sent to Rome from all parts of the world, examine them and report on their object and merits. We find such officials under the name of *Referendarii* at the court of Byzantium, and a document of the first years of the twelfth century (1102) speaks also

of *Referendarii Sacri Palatii.* For some time they probably differed little from the *Auditores,* but when the latter came to form a distinct body with its special attributions the former received likewise their own organization under the name *Referendarii Signaturae,* because their main function was to present petitions, decisions, or concessions for the signature of the Pope. In the sixteenth century, if not before, there existed a twofold Signatura, one dealing with requests for favors and called *Signatura gratiae,* the other concerned with petitions pertaining to the administration of justice and called *Signatura justitiae,* each one having, not only its own field, but also its own rules and mode of procedure. The Signatura justitiae constituted a regular tribunal or court of appeal; the Signatura gratiae partook more of the nature of a Congregation or Office, hence its rapid decline after the institution of the Roman Congregations. Already in the seventeenth century some questioned its utility and by the middle of the nineteenth its activity had ceased completely.

The present Signatura is a continuation, under a modified form, of the Signatura justitiae. "We have deemed it well," says Pius X in the Const. *Sapienti Consilio,* "to restore the tribunal of the Apostolic Signatura and by these present letters we do restore it, or rather we institute it, suppressing the ancient organization of the Signatura of grace and justice."

This tribunal, the highest in the Roman Curia, acts as a court of cassation, pronouncing on the validity of Rotal decisons and receiving accusations against Rotal judges and their possible irregular proceedings. It may take up matrimonial cases which the Rota refuses to reconsider; and it has authority to settle controversies arising from conflict

of jurisdiction between inferior tribunals. (Can. 1602-1605.)

ARTICLE III

OFFICES IN THE ROMAN CURIA
(Can. 260-264.)

61. The principal function of Offices is to expedite ecclesiastical business; the Code, after the Const. *Sapienti Consilio,* lays down rules for five of them: the Chancery, the Datary, the Apostolic Chamber, the Secretariate of State, and the Secretariate of Briefs.

I. THE APOSTOLIC CHANCERY. (Can. 260.)

(Dictionnaire d'Archéologie Chrétienne et de Liturgie, Chancellerie; R. L. Poole, Lectures on the History of Papal Chancery, Cambridge, 1915.)

62. 1. *Origin.* The beginnings of the Apostolic Chancery date from the earliest age of the Church, although the name does not seem to have come into use till the eleventh century. The series of known letters written by Popes commences with that of St. Clement to the Corinthians in the year 97; they received also important communications carefully preserved in the archives, like, the retractation of the heretic Praxeas which Tertullian speaks of. (*Adversus Praxeam,* c. 1.)

The Liber Pontificalis attributes to Pope Fabian (250) or to his predecessor Eleutheros, or even to Clement I, although without solid foundation, the division of Rome into seven regions, each of them having a notary attached to it for the purpose of recording the acts of the martyrs and keeping accounts. (Liber Pontificalis, edit. Duchesne, T. I, p.

147.) In the middle of the third century the Church of Rome provided for the subsistence of 1500 persons.

After the edict of Constantine the Church extended its action and had to develop its internal organization. The *Notarii* now form a college or guild; their chief officer, called the *Primicerius Notariorum,* soon becomes one of the most influential members of the papal court. He has his place in the Pope's council and we find him occasionally assisting at Synods. Next to him is the *Secundicerius.* Under them the *Scrinarii* write the Papal letters or have charge of the archives; the *Arcarius* fills the office of treasurer; the *Sacellarius* appears a little later as the Pope's paymaster, sometimes as librarian; the *Primus Defensorum* has under his protection the poor, the widows, and the orphans. Historians mention also the *Nomenclator,* the *Chartularii,* the *Exceptores,* and other officials.

For a long time the Popes carried out the work of general administration very largely through the Chancery; its business increased with the development of the central power in the Church and this brought about a division of labor, the organization of the Datary, of the Secretariate of briefs and afterwards of the Congregations, which greatly reduced its sphere of activity.

2. *Present Functions.* Under the Code the proper function of the Chancery is to expedite Apostolic Letters or Bulls concerning the provision of consistorial offices and benefices, the erection of new provinces or dioceses or chapters, or other affairs of major importance in the Church.

These Letters or Bulls must be forwarded only by order of the Consistorial Congregation when they pertain to matters belonging to its jurisdiction and by order of the Supreme Pontiff in other affairs, the

terms of the mandate being in each case strictly observed.

II. THE APOSTOLIC DATARY. (Can. 261.)

(L. Cellier, Les Dataires du XVe Siécle et les Origines de la Daterie Apostolique; Paris, Fontemoing, 1910; Canoniste Contemporain, 1915, p. 19.)

63. 1. *Origin.* The original function of the Datarius, the one from which he received his name, was to date pontifical documents, to put on them the *"Data"* or *"Datum," Datum Romae,* etc. In order to provide greater accuracy and security in the texts, Pope Adrian I decreed in 781 that they should go through two sets of hands and separated the work of the writer from that of the one who affixed the date marking the completion of the document and guaranteeing its authenticity. The first task belonged to one of the Notarii, the second to the highest officers of the Chancery, the Primicerius or the Secundicerius or one of their substitutes. We have not as yet a regular Datarius. A text of the thirteenth century mentions the *Data communis,* through which all petitions must pass, but nothing indicates in this an organization distinct from the Chancery. In 1406 Benedict XIII still speaks in general terms of him who dates *ille qui databit* and John XXIII, in 1410 of the *Datator* (Chancery Rules, n. 36; 157); a few years later Martin V uses the term *Datarius* (September 15, 1420, Rule, 112). This points to a special officer with a function of his own, and in fact the series of Datarii whose names have come down to us begins with the Pontificate of that Pope.

By a Bull of Nov. 7, 1475, Sixtus IV authorizes his Datarius, Francis of Toledo, to take with him a Friar Minor for his own consolation and as a possible helper. In 1496 the Datarius has an assist-

ant apparently with permanent appointment. This is the beginning of the Apostolic Datary; from this moment it grew rapidly and by the middle of the seventeenth century it had developed into one of the most complete and most important departments of the Curia.

The position of the Datarius being one of confidence, he had not long limited his action to the dating of the documents, but soon concerned himself with their contents; thus he gradually became the chief agent of the Popes in the distribution of their favors, particularly appointments to benefices and dispensations from external impediments of marriage and irregularities.

The Datary had, besides, the administration of the revenues derived from taxes, fines, or compensations paid on the occasion of appointments to benefices and, also from compositions of various kinds.

In the nineteenth century, the benefices reserved to the Holy See having become less numerous and the Congregations having introduced the practice of granting many of the favors formerly obtained through the Datary, several of the departments of the latter found themselves without object. Leo XIII, therefore suppressed some of them in 1878 and a few more in 1898; in 1901 he reorganized this whole Office on a much simplified plan. The Const. *Sapienti Consilio* further reduced its attributions by taking away from it the concession of dispensations from marriage impediments or from irregularities.

64. 2. *Competency.* "For the future," says Pope Pius X, "the one special function of the Datary shall be to take cognizance of the fitness of candidates to non-consistorial benefices reserved to the Holy See; to draw up and forward the Apostolic Letters con-

ferring these benefices; to dispense from the requisite conditions for the concession of the same benefices; to look after the pensions and charges which the Supreme Pontiff shall have imposed for the conferring of them." The Code confirmed these provisions without change.

III. THE APOSTOLIC CAMERA. (Can. 262.)

(Wernz, II, n. 670; Hilling, o. c. p. 137; Revue d'Histoire Ecclésiastique, Louvain 1900, p. 274-296, L'Administration des Finances Pontificales au XIVe Siécle, par J. P. Kirsch; Canoniste Contemporain, Mars, 1915, p. 114.)

65. 1. *Origin.* Formerly this Office had the care of all the temporal interests of the Holy See. As soon as the temporal possessions of the Roman Church acquired some importance the Popes needed assistance in their administration. They received it first from the members of their presbyterium, particularly from their deacons. Later on we find at the papal court various officials whose titles indicate a participation in the management of material things, the *Arcarius* or treasurer, the *Saccellarius* or paymaster, the *Vestiarius,* the *Vicedominus,* etc. In 1017 we meet with the term *Camera,* designating the place where ecclesiastical vestments, sacred vessels, and other precious objects were kept. By the end of the century the guardian of the Camera had become the *Domini Papae Camerarius* and exercised general supervision over papal finances.

The power and influence of the Camerarius, Chamberlain, or Camerlengo kept growing; in addition to his authority in fiscal matters he acquired civil and penal jurisdiction in all that pertained to his department and supreme command in the Church during the vacancy of the Holy See.

In modern times, however, the Popes limited his competency to the government of the Papal States, so that after the loss of the temporal power in 1870 the Camerlengo and the Apostolic Camera ceased to have any particular function except during the vacancy of the Holy See, when they retain their old prerogatives.

66. 2. *Present Functions.* For some time past the administration of the Church's finances has been in the hands of a commission of Cardinals presided over by the Cardinal Secretary of State to which the Cardinal Camerlengo may but does not necessarily belong. The position of the latter, then, during the life of the Pope is principally an honorary one. During the interregnum he has again the care and administration of the property and temporal rights of the Holy See and the direction of the Apostolic Palace. It is his privilege to make the necessary arrangements for the holding of the Conclave, to maintain order and execute the instructions of the College of Cardinals, conforming in all this to the rules laid down in the Const. of Pius X, *Vacante Sede Apostolica,* Dec. 25, 1904.

IV. SECRETARIATE OF STATE. (Can. 263.)

(Wernz, II, n. 677; P. Richard, Origines et Développement de la Secrétairerie d'Etat Apostolique, Louvain, 1910; Canoniste Contemporain, 1915, p. 227.)

67. 1. *Origin.* The organization of the Secretariate of State dates from the fifteenth century, when diplomatic relations between the courts of Europe assume a more formal and more methodical character, but its beginnings go farther back. In the fourteenth century, and probably long before, the Popes have a special staff of Notarii whom they use to prepare and write the letters and documents of a

particularly delicate or private nature and which for this reason could not go through the usual channels of the Chancery. These Notarii lived in the Apostolic Palace and formed what was called the *Camera secreta;* the correspondence of which they had charge was protected by the papal seal *Sigillo secreti,* and they received the name of *Notarii a secretis or Secretarii Papae, Secretarii Apostolici.* Calixtus III reduced their number to six, but Innocent VIII raised it to twenty-four, by the Bull *Non debet* of Dec. 31, 1497, by which he formally established the Secretariate of State. He constituted at the same time one of them *Secretarius domesticus Papae,* private secretary and confidential assistant of the Pope, a position calculated to give considerable influence to the incumbent, who for this reason remained revocable at will.

Under Leo X, who reorganized the Camera secreta, the Secretarius domesticus is a Cardinal; he has become a real Secretary of State, Minister of Foreign Affairs and Prime Minister.

When the Pope ceased in 1870 to be a temporal ruler the strictly political activity of the Secretary of State came also to an end, but he continued to conduct the diplomatic relations of the Holy See with civil governments and to direct the Apostolic Nuncios. The Pope employed him to transmit instructions to Bishops, to answer letters and dispatches from various persons, to fill the different offices in the Curia, to bestow papal distinctions, etc.

68. 2. *Present Organization.* The Secretariate of State, over which presides the Cardinal Secretary of State, consists at present of three sections.

1°. The first section, in charge of the Secretary of the Congregation for extraordinary Ecclesiastical Affairs, attends to those matters which according to Can. 255 must be submitted for examination to that

Congregation, while the matters which belong to other Congregations are referred to these.

2°. The second section, presided over by the Substitute, deals with ordinary affairs regularly handled by the Secretariate according to the practice of recent times.

3°. The third section is directed by the Chancellor of Apostolic Briefs, who attends to the expedition of Briefs. Before the Constitution *Sapienti Consilio* it formed a distinct Office, separated in the fifteenth century from the Apostolic Chancery, and empowered to grant various favors, besides attending to the papal letters. Under the present discipline it has lost its autonomy and many of its former privileges.

V. SECRETARIATES OF BRIEFS TO PRINCES AND OF LATIN LETTERS

69. 1. The Secretariate of Briefs to Princes, formerly part of the Secretariate of Briefs, was organized as a distinct Office, probably in the seventeenth century, to have special charge of the Briefs addressed to persons or rank. It retains its original function under the present discipline.

2. The Secretariate of Latin Letters writes in Latin the official correspondence of the Pope in matters which do not belong to any other Office. (Canoniste Contemporian, Juillet, 1915, p. 365.)

Chapter V

Legates of the Roman Pontiff
(Can. 265-270.)

(Wernz, II, n. 680; Thomassin, P. I, L. II, c. 107-108; 117-119; Blat, p. 240; G. Cocchi, De Clericis in Specie, n. 201; Catholic Quarterly Review, vol. xx, 1895, p. 112; Heffele-Leclercq, T. IV, p. 1424; J. Roy, Du Role des Légats de la Cour de Rome en Orient et en Occident du IVe au IXe Siécle, Paris, 1878; Catholic Encyclopedia, Legate, Nuncio; H. Biaudet, Les Nonciatures Permanentes jusqu'en 1648, Helsinski, 1910; Ecclesiastical Review, Nov. 1921.)

70. 1. *Origin and Historical Development.* (*a*) The Roman Pontiffs, possessing by divine institution ordinary and immediate jurisdiction over all the faithful, must by that very fact have the right to exercise their spiritual authority in all parts of the world personally and through their representatives as well, independently of any human power.

This right, denied by some and unduly limited or interfered with by others, the Popes have always asserted and they have exercised it from the beginning as occasions demanded.

In 419, as some African Bishops object to the mission of Faustinus, Bishop of Potenza, whom he has sent to settle some local dispute, Pope Zozimus maintains the legitimacy of his action and to justify it refers to the fifth Canon of the Council of Sardica (343), which sanctions this as an already long accepted discipline. (Leclercq, p. 1431; Thomassin, ii, p. 449.) Paschal II (1099-1118) protests against the ill treatments inflicted on his Legate in England under Henry II. At the end of the eighteenth cen-

tury the Archbishops of Mayence, Cologne, Salzburg and Treves, imbued with the false doctrines of Febronius, who denied the immediate jurisdiction of the Pope over all Christians, refuse to receive the Legate sent by Pius VI and denounce his appointment as an abusive interference with their metropolitan prerogatives. The Pontiff answers them in the celebrated letter of Nov. 14, 1789, in which he refutes their erroneous theories and affirms once more in the most explicit manner the rights of the Holy See to send Legates.

(*b*) The exercise of these rights goes back to the earliest ages of the Church. Not speaking here of Legates sent on a temporary mission to preside over a Council, to settle some controversy, etc., we find permanent representatives of the Popes at the court of Constantinople in the fifth or even in the fourth century. Their authority extends to all that concerns faith or ecclesiastical discipline and they remain till the troubles caused by the Iconoclasts and afterwards the Greek schism put an end to their office. They are called *Apocrisarii* or *Responsales.* We meet them again for a while at the court of Charlemagne, but the conditions that prevail under his succesors and still more under the German emperors make it impossible for them to continue their mission. Henceforth the Roman Pontiffs send Legates from time to time to the temporal rulers as particular circumstances require until in the fifteenth century the former Apocrisarii reappear under the name of Nuncios.

Outside of the imperial court the Popes have also at a very early date representatives of a more exclusively ecclesiastical character, whom they call their Vicars, usually Bishops of the country, invested with special authority. Their Vicar in Illyria, ordinarily

the Bishop of Thessalonica, exercised jurisdiction in their name as early as the end of the fourth century. He had the right "to visit churches, examine and approve candidates for the episcopate, examine and consecrate Metropolitans, convoke synods and transmit their acts to Rome, dispense Metropolitans from residence, receive petitions addressed to the Holy See for immediate decision or transmission to the Pope, and, finally, even to judge major causes." About the same time several of the Bishops of Arles enjoyed similar prerogatives in Southern Gaul. Pope Simplicius created Zeno, Bishop of Seville, his Vicar in Spain and St. Boniface occupied the same position in Germany.

In the course of time Vicars grew fewer and less important; by the end of the eighth century they had been replaced by the "Legates born," *Legati Nati,* so called in contradistinction to the *Legati Missi* because as a rule they were natives of the country. They did not differ essentially from the Vicars except that, being more numerous, they did not possess the same extensive powers. Their office was attached to certain sees: Lyons, Sens, Narbonne, Arles, in France; Seville, Tarragona, Toledo, in Spain; Mayence, Salzburg, Treves, in Germany; Canterbury, in England, etc.

The usefulness of the Legates born or Primates, as they were also called, did not prove of long duration either. The unfitness of some of them, local rivalries or jealousies, and the consequent dissensions often made the exercise of superior jurisdiction by native Primates very difficult. Hence the necessity for the Holy See to have recourse for this to Prelates taken from the Roman Curia, foreign to the country and to all parties. These *Legati Missi* or a *Latere*

practically supersede the Legati Nati in the eleventh, twelfth, and thirteenth centuries.

With the coming of the regular Nunciatures in the sixteenth century the Holy See has again permanent representatives in the principal countries.

71. 2. *Present Organization.* At the present time the representation of the Roman Pontiffs is confided to three classes of officials: the Legati a Latere, the Nuncios or Internuncios, and the Apostolic Delegates.

1. Function and Powers. (*a*) The Legati a Latere are Cardinals taken from the senate and, as it were, the very side of the Pope, hence their name, and sent on some particularly important or solemn mission; thus Pius VII sent Cardinal Caprara to France to execute the Concordat of 1801; Pius IX Cardinal Patrizi as a Legate a Latere to France also in 1856 to baptize the son of Napoleon III. Cardinals who represent the Pope on such occasions, for example, as a Eucharistic Congress do not receive, according to present usage, the title of Legates a Latere.

Formerly these Legates enjoyed very ample powers; under the new Code the particular mandate will determine them in each case.

72. (*b*) Nuncios and Internuncios. All representatives of the Holy See permanently accredited to a foreign government have a right to the title of Internuncio if not to that of Nuncio; according to a declaration of Benedict XV issued through the Secretariate of State May 8, 1916 (A. A. S., June 7, 1916) only those should be called Delegates whose mission has an exclusively ecclesiastical character.

The difference between Nunciatures and Internunciatures, much like that between Nunciatures of the first and of the second class, is one not of power but rather of dignity and honor. There are four

Nunciatures of the first class: Paris, Madrid, Vienna, and Lisbon; we find Nuncios of the second class in Argentina, Bavaria, Belgium, Brazil, Chile, Columbia, etc.; and Internuncios in Bolivia, Costa Rica, Equador, Holland, etc. The American government, for some time (1848-1868), maintained a diplomatic agent in the Papal States (Historical Records and Studies of the United States Catholic Historical Society, New York, vol. xi, 1918) and at his suggestion a move was made in 1853 to establish a Nunciature in Washington. For this purpose Monsignor C. Bedini stopped in the United States on his way to Brazil, and called on the President, Mr. Franklin Pierce; but calumnious reports soon circulated against him aroused anti-Catholic feeling, hostile demonstrations occurred in several cities he visited, and a plot to assassinate him was discovered just in time to save his life. The project was then abandoned.

The Nuncios and Internuncios fulfill a twofold office, one diplomatic, the other ecclesiastical. In conformity with the traditional rules of the papal court, from which they should not depart, they foster friendly relations between the Holy See and the government with which they deal; and in the territory assigned to them they watch over the condition of the Church and report concerning it to the Roman Pontiff. At the beginning of the last century the Spanish government attempted to limit the jurisdiction of the Nuncio to political matters but Pius VII refused to consent to this and answered (Jan. 9, 1802) through Cardinal Consalvi that the Holy See sets more value on the religious than on the diplomatic action of its representatives. A letter of Cardinal Jacobini to the same government (April 15, 1885) reaffirms this principle and corrects erroneous

views which tended to prevail in Spain regarding the functions of Nuncios. (A. S. S., vol. xvll, p. 561.)

Besides their ordinary powers Nuncios and Internuncios receive extensive delegated faculties. The Consistorial Congregation has drawn up a list of those which the Holy See usually grants them since the promulgation of the Code. (Il Monitore Ecclesiastico, Maggio, 1920, p. 137.)

According to a rule accepted by the Congress of Vienna in 1815 and observed ever since, a Nuncio is *ex-officio dean* of the entire diplomatic body within his territory and therefore on all public occasions he takes precedence of all ambassadors.

73. (*c*) Apostolic Delegates possess the same ecclesiastical powers, both ordinary and delegated, as Nuncios, to watch over the Church within their territory, to report to the Holy See, settle controversies, grant dispensations, etc., but they do not deal officially with the civil authorities of the country. The Holy See is represented by Apostolic Delegates in the United States since Jan. 21, 1893, in Canada, Cuba and Porto Rico, the Philippines, Mexico and other countries still under the Propaganda.

(*d*) There exist still some episcopal sees to which remains attached the title of Apostolic Delegate, but this implies no special right or prerogative any longer, except perhaps for the Ordinary of Gran in Hungary or that of Salzburg. (Can. 270.)

74. 2. *Cessation of Office.* The Office of Legate does not cease by the death of the Pope nor does it lose any of its prerogatives unless otherwise specified in the pontifical letters constituting it.

It ceases at the expiration of the mandate, by revocation duly notified to the person concerned, and by resignation accepted by the Supreme Pontiff.

3. *Relations to Local Ordinaries.* (*a*) Papal Legates of whatever rank must respect the rights of local Ordinaries and not hamper in any way their legitimate exercise but rather facilitate it. Their authority should not conflict with that of Bishops, being of a different order, but should on the contrary strengthen it.

(*b*) Even though they would not possess the episcopal character they take precedence, within the territory of their jurisdiction, of all the Ordinaries excepting only Cardinals; this in conformity with the rules of precedence laid down in Can. 106.

(*c*) When they have the episcopal character, as is usually the case, they do not need the permission of the respective Ordinaries to bless the people, and perform the liturgical functions even in pontificals, with the use of the throne miter, and crosier, in any of their churches except the cathedral.

Chapter VI

Of Patriarchs, Primates, and Metropolitans

(Can. 271-280.)

I. PATRIARCHS AND PRIMATES. (Can. 271.)

(Wernz, II, n. 711; Thomassin, P. I, L. I, c. 7-26; 31-38; Bingham, Antiquities of the Christian Church, B. I, c. 17; Maroto, 749, 750; Duchesne, o. c., c. 1, § 4; Catholic Encyclopedia, Patriarch, Primate; Batiffol, o. c., p. 127; Turner, l. c.)

75. 1. *Patriarchs.* In the ancient Church, next to the Pope and his representatives came in the order of authority and dignity the Patriarchs, who possessed real jurisdiction over other Bishops and Metropolitans and themselves immediately depended on the Bishop of Rome. The term *Patriarch,* which among the Jews after the destruction of Jerusalem designated a sort of governor, may not have been used in its later acquired strict sense much before the eighth century, but the office corresponding to it existed at a much earlier date. The Council of Nicaea (325, Can. 6) expressly recognized the ancient and special position of the Bishop of Alexandria in Egypt and also that of the Bishop of Antioch and others. In 381 the Council of Constantinople (Can. 2) mentions together with the Bishops of Egypt those of Thrace, Pontus, Asia and the Orient as forming distinct groups under the authority of a Major Metropolitanus or Exarch. Diocletian had divided the Empire into Prefectures—Gaul, Italy, and Spain in the West, Asia in the East—each Prefecture including several dioceses and each diocese

several provinces. The Church having gradually adopted these divisions, the three Prefectures of the West remained under the special authority of the Bishop of Rome, constituting the Patriarchate of the West as it was called a little later; the dioceses of Thrace, Pontus, Asia, the Orient and afterwards Egypt, which made up the Prefecture of the East with their Bishops and Metropolitans, were placed under the jurisdiction of the Metropolitans of Heraclea, Caesarea, Ephesus, Antioch, and Alexandria respectively. Constantinople belonged to the diocese of Thrace; but when it had become the residence of the emperors and a second Rome politically, it claimed the title and privileges of a second Rome ecclesiastically, and it succeeded in spite of protests from the Popes in obtaining first a primacy of honor (Const. 381, Can. 3) then real jurisdiction over the neighboring provinces, thus practically absorbing the Exarchates of Heraclea, Caesarea, and Ephesus, which lost almost all their former privileges. This left four Exarchates or Patriarchates, those of Rome, Constantinople, Antioch, and Alexandria; the Council of Chalcedon added that of Jerusalem. (451, sess. vii, viii.) They continue to the present day to rank as major Patriarchates in contradistinction to the minor Patriarchates established in the West or to others erected at a later date in the East at Babylon (1681) and in Cilicia for the Armenians (1739.) All of these sees have their titulars and some have several belonging to different rites, without speaking of the heretical or schismatic ones.

In the West, Aquileia and then Grado enjoyed for some time the honor of Patriarchate; in 1751 Benedict XIV transferred the title to Venice. After the discovery of America Leo X created the Patriarchate of the West Indies (1520), of which a Span-

ish Prelate bore the title; to give satisfaction to Portugal, Clement XI, in 1716, erected the titular Patriarchate of Lisbon and finally Leo XIII, in 1886, established the Patriarchate of the East Indies, attaching it to the see of Goa. But all these are only honorary distinctions implying no special power. In the West the Bishop of Rome alone has true patriarchal authority. Of the Latin Prelates who bear the title of one of the Eastern Patriarchates, only one exercises jurisdiction, that of Jerusalem.

76. 2. *Primates.* Primacy implies priority, precedence, superiority; early Christian writers use the term in various senses; it serves to designate the powers of Bishops, the rights of Metropolitans, the supreme authority of the Pope, as also the prerogatives of certain episcopal sees. In the East we find the name of Primate or Exarch given to the Metropolitans of Heraclea, Ephesus, and Caesarea, who, without enjoying all the privileges of Patriarchs, retained some authority over the Metropolitans of the civil dioceses of Thrace, Asia, and Pontus. In Africa, outside of the Bishop of Carthage, who occupied a position of special rank, the senior Bishop in each province received the title of Primate and exercised the same jurisdiction over other Bishops that was exercised in other parts of the Church by Metropolitans. (Carthage, 386, Can. 12; Hippo, 393, Can. 25.) This led to the identification, in some places, of Primate and Metropolitan. Hincmar, Bishop of Rheims, in the ninth century, claimed primatial rights for all Metropolitans. Canonists noticed, however, that, in some texts at least, chiefly as found in the collection of the False Decretals, primacy implies jurisdiction over Metropolitans and, as they found only the Vicars of the Apostolic See or Legates-born in possession of such supra-metro-

politan jurisdiction, they reserved the title of Primate to them. (E. Lesne, c. xi.) From this time on (ninth century) we meet with one or several Primates in every Church of some importance; their superior powers become attached to certain sees and ordinary. They take precedence of all Bishops and Metropolitans in their territory, confirm and consecrate the Metropolitans, receive appeals from their sentences, convoke Plenary or National Councils, besides exercising other faculties they may have received from the Pope. By the institution of the Legati Missi and afterwards the Nuncios, Primates lost their powers, but the title generally remained with the sees that had been honored with it for some time. Except in a few cases, this title is now a merely honorary one, giving right of precedence over Metropolitans and rank next to Patriarchs. At the request of the Baltimore Councils of 1852 and 1858 the Congregation of the Propaganda conferred this primacy of honor upon the Archbishop of Baltimore (Aug. 15, 1858); in 1893 Leo XIII restored the title of Primate of Africa in favor of the Archbishop of Carthage.

II. METROPOLITANS. (Can. 272-280.)

(Wernz, n. 718-723; Bouix, De Episcopo, I; Thomassin, I, c. 40-48; Bingham, B. II, c. xvi; Heffele-Leclercq, I, p. 539; Duchesne, l. c., p. 13; Batiffol, p. 121; E. Lesne, La Hiérarchie Episcopale en Gaule et en Germanie, 742-882, Paris, 1905.)

77. 1. *Origin.* The division of the Church into provinces presided over by Metropolitans is not, as some modern historians have affirmed, an imitation of the cult of Rome and Augustus nor originally a mere copy of the imperial organization; it has an independent origin and developed gradually under

the influence of circumstances which varied with times and places. (Batiffol, p. 117.)

The Apostles and early Christian missionaries naturally began the work of evangelization in the more important cities of the empire, which often happened to be capitals of provinces: Antioch, Ephesus, Thessalonica, Corinth, Rome, Alexandria, Carthage. From these centers the Gospel spread to the neighboring towns, new churches were established which, belonging to the same district and having a common origin, felt particularly bound to one another and to the church from which the faith had come to them. They would apply to the latter in their difficulties doctrinal and disciplinary and often received from it both material and spiritual assistance; thus the communities of a certain territory turned out to form distinct religious groups, over which the Bishop of the principal city acquired an authority somewhat vague at first and of a merely moral character, but defined afterwards and sanctioned by legislation. Frequently this territory coincided with the civil province and the chief city with the metropolis, but not necessarily nor always, particularly in the beginning, when the Christians were few. In the accounts of the early Councils we not seldom find gathered under the presidency of one prelate Bishops belonging to several civil provinces.

By the end of the third century the provincial organization had about reached its full development in the East. The Council of Nicaea (325, Can. 4), sanctioning a discipline already well established, decrees that "a Bishop must be chosen by all the Bishops of the province; if some of them cannot attend the election, at least three must be present for this and for the consecration, and they must have the written permission of the absent ones. The confirmation of

these proceedings belongs by right in every province to the Metropolitan." A few years later the Council of Antioch (341, Can. 9, 11, 16, 20) reminds the Bishops that "in each province the Bishop of the metropolis has the care of the affairs of the province, because all who have some business to transact go to the metropolis; consequently it has been provided that he would have the first rank and that conformably to an ancient Canon still in force, the other Bishops would not do anything without him except administer their dioceses. He in turn should decide nothing of importance without consulting them. He gives the commendatory letters and twice a year convokes the Provincial Council which could not be held without him." The provinces and metropolis which the Councils have here in view correspond no doubt to those of the civil administration, but the rule laid down by them admits of exceptions (Nicaea, Can. 6) and it directly affects only the Eastern Church. In Africa the senior Bishop in each province, not the Bishop of the metropolis, presides over it (Carth., 386, Can. 12; Hippo, 393, Can. 25). In Gaul the provincial organization does not appear much before the fifth century and not till later in other countries of Europe, but then it generally follows the civil divisions as in the East (Thomassin, l. c., c. 40, 41); the Bishop of the metropolis occupies in it the same place of pre-eminence. (Turin, 401, Can. 2.) For a time in the eighth and ninth centuries, at least in some countries, he even obtains more extensive and more personal powers, but he soon loses them, partly owing to the illegitimate use made of them, partly as a result of the development of papal authority, through the influence of the False Decretals, or other causes. (E. Lesne, o. c., p. 77, 87, 185; Thomassin, l. c., c. 43.)

Under decretal law the Metropolitans, called also Archbishops since the fifth century in the East and since the eighth in the West, still retain the right of confirming the election of their suffragans and giving them the episcopal consecration, of convoking and presiding over Provincial Councils, of visiting the dioceses of the province under certain conditions, of appointing to benefices in some cases of devolution, of receiving appeals in the second instance. The law, however, favors rather the independence of individual Bishops or their immediate dependence on the Holy See and tends to apply to Metropolitans the rule made for Patriarchs and Primates, that they have only the powers granted them by the Sacred Canons or ancient custom. (Wernz, n. 718; Thomassin, c. 46.) In the fourteenth century the Popes commenced to reserve to themselves the election and consecration of Bishops. The Council of Trent puts some further slight restrictions on the prerogatives of the Metropolitans. (Sess. xxiv, c. 2, de Ref.; Thomassin, c. 48.)

78. 2. *Powers.* 1°. In his own diocese a Metropolitan has the same rights and duties as any other Bishop. (Can. 273.)

2°. In the other dioceses of the province he possesses the following powers under the present discipline:

(*a*) To give the investiture to candidates presented by patrons if, without legitimate excuse, the suffragan has neglected to do so within the two months allowed by law;

(*b*) To grant indulgences of 100 days as in his own diocese;

(*c*) To appoint a Vicar Capitular or an Administrator if, for whatever reason, the Chapter or the Consultors fail to do so within the prescribed time.

By special provision of the Consistorial Congregation of Feb. 22, 1919, to last for three years, in the United States the Metropolitan makes the appointment of the Administrator in dioceses which have not at least five or six Consultors, and submits it to the Apostolic Delegate for ratification. (Eccl. Rev., May, 1919, p. 532.)

(*d*) To watch over the integrity of the faith and the observance of ecclesiastical discipline in the province and report to the Roman Pontiff any abuses he may discover in these matters.

(*e*) To make the canonical visitation of the dioceses of the province when the suffragans neglect this duty and after obtaining the approval of the Holy See. The Council of Trent required only the approval of the Provincial Council (Sess. XXIV, c. 37); under decretal law no approval was needed nor negligence presupposed on the part of the suffragans. (C. l, 5, III, 20, in Sexto; Thomassin, l. c. 47, v; 48, xiii.)

In the course of the visitation he may preach, hear confessions and absolve from sins reserved to the local Ordinary, inquire into the life and regularity of the clergy, denounce to their Bishop that he may punish them those found guilty of notorious crimes, inflict punishments himself, even censures, on persons who would offer to him or to his suite open and public insults.

(*f*) To celebrate pontifically as a Bishop does in his own diocese, with throne and baldachino, in all the churches of the province, even those which enjoy the privilege of exemption, notifying the Bishop if he is to pontificate in the cathedral church; to bless the people and have the cross carried before him, but not to perform any other acts implying jurisdiction;

(*g*) To receive appeals from final or interlocutory sentences equivalent to final ones pronounced in the suffragans' courts, in accordance with Can. 1594, § 1.

(*h*) To judge in the first instance cases pertaining to the temporal rights or interests of Bishops as provided in Can. 1572, § 2.

This enumeration of Metropolitans' powers is limitative. (Can. 274.)

79. 3. *The Pallium.* (Catholic Encyclopedia, Pallium; H. Thurston, The Pallium, London C. T. S.; Baudot, Pallium, Science et Religion; Thomassin, P. I, L. II, c. 53.)

1°. Form and Origin. The Pallium at present consists of a narrow circular band made of white wool, having two pendants about twelve inches long; it is worn around the neck and shoulders, the pendants hanging down, one in front and the other behind. Historians do not agree as to its origin. Some see in it an ordinary garment transformed in the course of time into one of the insignia of higher civil officials, such as consuls, among the Romans, and given by the Emperors to the Popes and Church dignitaries. (Thomassin, l. c., c. 56, ii; Duchesne, o. c., c. xi; Wernz, n. 725.) It would seem that in the ancient Eastern Church the Bishops generally wore a Pallium during the celebration of the Holy Sacrifice. (Const. 869, Can. 17, 27.) The same practice existed in Africa and in Gaul; the Council of Bacon (581, Can. 6) forbids Bishops to say Mass without Pallium. In Italy the Bishops of Rome used the Pallium at least as early as the fifth century, as also those of Ostia and Ravenna, but not the others. In 513 Pope Symmachus sent the Roman Pallium to Caesarius, Bishop of Arles, whom he appointed his Vicar; some of his successors continued to bestow it upon the Metropolitans of Arles and

granted it also to other prelates, particularly to the Archbishops of Canterbury, who enjoyed a primacy of jurisdiction over the whole Church of England. Thus gradually the Popes' Pallium became the symbol of their supreme authority and the concession thereof to another Bishop, the expression of a communication of the same authority.

In the eighth century, when Metropolitans, who in the confusion following the barbarian invasions had lost most of their prerogatives, were restored to their former rank with even greater powers than before, they received the Pallium from Rome as an evidence of the jurisdiction over fellow Bishops conferred upon them. (E. Lesne, o. c., p. 42, 44, 94.) Henceforth Metropolitans must ask for the Pallium, be invested with it, and promise obedience to the See of Peter before they come into possession of their privileges. (C. 4, X, I, 5; c. 28, X, I, 6; Thomassin, l. c., c. 57, vi-ix.)

80. 2°. Necessity. Every Metropolitan is bound, within three months from his consecration or if he is consecrated, from his promotion in Consistory, to petition the Pope for the Pallium; he may do so personally or by proxy.

Before the imposition of the Pallium either upon himself personally or upon his procurator a Metropolitan may not, except by special Apostolic Indult, lawfully exercise archiepiscopal jurisdiction, *v. g.* convoke a Council nor perform such acts of the episcopal power of Order as according to liturgical rule require the use of the Pallium, for example, the consecration of Bishops, of altars, of churches, of chrism, the administration of the sacrament of Holy Orders, (C. 28, X, I, 6.)

3°. Use. A Metropolitan may use the Pallium in all the churches of his province, not excepting the

exempt ones, in the solemn celebration of Mass, on the days determined by the Pontifical (Pontificale Romanum, de Pallio; Caeremoniale Episcoporum, L. I, c. 16, n. 4, 6) or on other days by special concession. He may not use it outside of the church, nor outside of his province even with permission of the local Ordinary. These restrictions do not apply to the Pope, whose jurisdiction extends to all territories. The Code does not renew the provision of an ancient Decretal forbidding a Metropolitan to take the title of Archbishop before he has received the Pallium. (C. 3, X, 1, 8.)

Should a Metropolitan lose his Pallium or be transferred to another archiepiscopal see he would need a new Pallium. (Can. 278.)

A Pallium can neither be lent, nor given away, nor left to any one after death, but all the Pallia a Metropolitan ever obtained must be buried with him. (Can. 279.)

Titular Archbishops do not regularly receive the Pallium as they have no jurisdiction. Sometimes the privilege of the Pallium has been attached to an episcopal see or granted to a Bishop personally; in such cases it is nothing more than an honorary distinction.

4. *Precedence.* Patriarchs enjoy precedence over Primates, Primates over Archbishops, Archbishops over Bishops. In his own diocese, however, a Bishop has precedence over any other Prelate who is not a Cardinal, or an Apostolic Legate, or his Metropolitan. (Can. 280, 347.)

Chapter VII

Plenary and Provincial Councils

(Can. 281-292.)

(Benedict XIV, De Synodo Dioecesana; Bouix, Du Concile Provincial; Thomassin, l. c.; P. II, L. 3, c. 45-58; Dictionary of Christian Antiquities, Council; Hefele-Leclercq, Introduction, passim; Wernz, n. 852; Catholic Encyclopedia, Plenary, Provincial Councils; Batiffol, o. c., p. 78; E. Magnin, L'Église Wisigothique au VIIe Siécle, Paris, 1912, c. iii, iv.)

81. 1. *Origin.* The historian Eusebius refers vaguely to Synods held probably in the first part of the second century against the Montanists by Apollinaris of Hierapolis in Asia and Sotas of Anchiales in Thrace; he explicitly names several Councils to which the Easter controversy gave occasion towards the end of the same century, in Palestine, Pontus, Mesopotamia, Asia Minor, Gaul, and Italy. (Ecclesiastical History, Book V, c. xxvi, xix, xxiii; Hefele-Leclercq, 1, p. 130, 150.) In the third century during the periods of peace, Bishops met frequently to condemn heresies or settle controversies, at Carthage about the year 220, Alexandria, 231, Rome, 235, 251, 260, Iconium, 230-235, Carthage again six times between 251 and 256, Narbonne, 255, and in other places.

The Prelates attending these meetings usually belong to several civil provinces. In the middle of the third century, St. Firmilian, Bishop of Caesarea, writes to St. Cyprian of Carthage (Litt. 75) about Synods held every year by the Bishops and priests of the provinces of Pontus and Cappadocia. Most

probably we have here now provincial Councils; with the progress of provincial organization in the Church they have become a regular institution. The Councils of Nicaea (325, Can. 5) and of Antioch (341, Can. 20) confirm and extend an existing discipline when they order Metropolitans to call together the Bishops of their province twice a year.

For matters of more general interest Bishops continued to assemble from different ecclesiastical provinces even outside of the Œcumencial Councils as, for example, at Elvira about the year 300, Arles in 314, Ancyra 314, Hippo in 393. Of special importance are the Plenary Councils of Carthage in the fourth and fifth centuries, and those of Toledo in the sixth and seventh. (Thomassin, c. 45, 47.)

82. 2. *Frequency.* 1°. Plenary Councils. The Code includes under this name all those in which Bishops belonging to several provinces take part. One of them held at Hippo in 393 prescribed (Can. 9) an annual meeting of the Bishops of all the African provinces and the Council of Carthage (401, Can. 8) confirmed this ordinance, but the obligation proved too onerous and another Council of Carthage (407, Can. 1) decided that the reunions would take place when circumstances would call for them. This rule prevailed practically everywhere. Fairly frequent during certain periods, as in Africa till the Vandal invasions and in Spain under the Visigoth kings, Plenary Councils are much rarer at other times. (E. Magnin, l. c.; Dictionnaire d'Histoire et de Géographie Ecclésiastiques, Paris, 1911, Afrique, p. 811-822.)

In the Middle Ages they often serve also as national assemblies for the discussion and settlement of political problems, and monarchs who appreciate their influence, particularly the Carolingian princes,

urge if they do not command, their frequent and even, for a while, annual and bi-annual celebration. (Thomassin, l. c., c. 51.)

During the Western Schism temporal rulers again frequently take it upon themselves to assemble the Bishops of the country to devise with them the way of putting an end to divisions in the Church. On other occasions they look to such gatherings for support against the Popes themselves. (Tours, 1501.)

This practice, however illegitimate or justified only by exceptional circumstances, gave an apparent foundation to the theory of the kings' power over National Councils so strongly advocated by Gallicans, by Febronius and his followers, Nuytz and the Regalists. The Popes condemned their teachings repeatedly, denying to civil governments any rights in this matter. (*Auctorem Fidei,* Prop. 85, Aug. 28, 1794; Syllabus, Prop. 35, 36, 37.) As, on the other hand, Patriarchs or Primates had lost their former jurisdiction over Metropolitans, there remained only the Bishops of Rome, in the Latin Church, who possessed the necessary authority to convoke Plenary Councils. Pius IX explicitly declared that their permission was necessary to hold them. (*Collectio Lacensis,* T. IV, p. 4; T. V, p. 995, 1336.) This permission they refused several times in the nineteenth century, for example, to the Bishops of Germany (May 17, 1849, *Coll Lac.,* T. V, p. 990, 994) and to the Bishops of France (*Coll. Lac.,* T. IV, p. 2) for fear, no doubt, of a recurrence of ancient disputes; but they granted it to the Bishops of the United States (1852, 1866, 1884), of Ireland (1875), of Australia (1885), of Latin America (1895).

The Code, then, introduces no change when it enacts that Ordinaries belonging to several provinces

may assemble in Plenary Council after asking permission from the Roman Pontiff, who will appoint a Delegate to convoke and preside over it.

83. 2°. *Provincial Councils.* The letter of St. Firmilianus quoted above implies that in Cappadocia and Pontus there existed already, in the third century a rule obliging the clergy of these provinces to meet once a year. The Council of Nicaea asks the Metropolitans to hold these meetings twice a year and the Council of Chalcedon (451, Can. 19) renews the command which, it states, has not been obeyed perfectly. We meet with the same ordinance and the same complaint in many subsequent Synods. Some are satisfied with one Provincial Council a year, since they can obtain no more. (II Orleans, 533, Can. 2; Thomassin, c. 50.) Pope Hormisdas writes in that sense to the Bishops of Spain and St. Gregory to those of France. Wars, the opposition of civil rulers and other causes render enforcement of the law difficult. Between the tenth and the eleventh Council of Toledo 18 years had elapsed; the Fathers of the latter Synod, after describing the many evils due to this long interruption, decree (Can. 15) excommunication for a year against all the Bishops of the province if they let a whole year pass without holding a Council, unless prevented by royal orders. About the middle of the next century St. Boniface writes to Pope Zachary that the Franks did not have any Synods for 80 years. With the support of Rome he succeeded in restoring them for a time. In 847 the Archbishop of Mayence declares that there has been no Council in his province from time immemorial.

Popes and Councils continued, however, to insist on compliance with the law. The fourth Council of Lateran (1215, Can. 6) solemnly promulgates it

again with the mitigation introduced by custom and particular legislation. Its application met with the same difficulties as before and as early as 1274 Gregory X, in a letter to the Bishop of Narbonne, has to deplore its almost universal neglect to the great detriment of ecclesiastical discipline. The Councils of Constance, 1414-1418, Cologne, 1442, Bourges, 1528, Lateran, 1515, made a further concession and imposed the celebration of Provincial Councils only every three years. The Fathers of Trent accepted this rule, but insisted again on strict fidelity to it, threatening offenders with suspension from office. (Sees. XXIV, de Ref. c. 2.)

As a result the latter part of the sixteenth century witnessed a remarkable revival of conciliar activity, particularly in northern Italy under the impulse of St. Charles Borromeo, Archbishop of Milan. There was something similar in nearly all Catholic countries towards the middle of the nineteenth century. Still Provincial Councils have not become a regular institution as intended by the law. In modern times, with the facilities of communication and easy recourse to Rome, they seemed less necessary. Some Bishops requested the Vatican Council to make them obligatory only every five years. There was no decision taken then, but some years later Leo XIII extended the period to twelve years for Latin America and now the Code extends it to twenty for the whole Church: "In every province a Provincial Council should be held at least every twenty years." (Can. 283.) They may be held more frequently.

84. 3. *Convocation and Presidency.* 1°. The convocation of and presidency over Plenary Councils in the ancient Church belonged by right to Patriarchs, Exarchs or Primates; thus ordinarily, though not always, the Bishop of Carthage convoked the

Councils of Africa, the Primate of Toledo those of Spain, the Primate of Arles those of southern Gaul. Christian kings, particularly in Spain and in France, often claimed also some right of convoking National, and occasionally but not so frequently, Provincial Councils. (E. Magnin, l. c., p. 51, 106; Thomassin, l. c., p. 230; Gregory of Tours, Historia Francorum, iv, 17, vii, 20, x, 19.) In a few cases Popes or their Delegates called meetings of the Bishops of a province or nation.

Under the present law Plenary Councils must be convoked and presided over by the Delegate appointed for this purpose by the Pope.

2°. For Provincial Councils the rule has always been and still remains that the Metropolitan convokes and presides over them. Should the Metropolitan see be vacant or its incumbent legitimately prevented from discharging this office, his duty and right devolve upon the senior Bishop of the province, seniority dating from promotion to the suffragan diocese.

85. 4. *Constituent Members.* The earliest known Synods consist of Bishops, without mention of any one else. The Council of Nicaea (Can. 5), like the subsequent ones, imposes only on Bishops the obligation of attending the provincial assemblies; others, however, refer also to the presence of priests, deacons, and even of laymen. According to Eusebius, between seventy and eighty Bishops assisted at the Council of Antioch in 267 or 268, besides priests and deacons. (E. H. vii, 26.) The Synod of Elvira (300) opens in presence of nineteen Bishops, twenty-six priests, deacons, and lay people; thirty-three Bishops, fifteen priests, twenty-eight deacons, two lectors, seven exorcists subscribe the Acts of the Council of Arles (314). The Fourth Council of

Toledo (633) describes in detail the order of precedence therein observed: first come the Bishops, then the priests, the deacons, who remain standing, and finally lay persons who have merited admission. In the National Councils, which treated also of the affairs of the country, state officials had naturally their place. Some laymen appeared before Councils for personal matters and there may have been sessions opened to the general public, but in all cases the Bishops alone had a decisive vote, with possibly some priests admitted by the Metropolitan to take part in the deliberations.

86. Present Discipline. 1°. Members of Plenary Councils. (*a*) Metropolitans, residential Bishops, Apostolic Administrators of dioceses, Abbots or Prelates Nullius, Vicars Apostolic, Prefects Apostolic, and Vicars Capitular are bound to assist at the Plenary Council and should, therefore, receive a summons; they have a decisive vote. Metropolitans and Bishops may, if they choose, send their Coadjutor or Auxiliary.

(*b*) Titular Bishops residing in the territory must attend also if the Delegate acting upon his instructions convokes them, and they have then a decisive vote unless the letter of convocation expressly states the contrary.

(*c*) Other members of the secular or regular clergy, for example, superiors of Religious Communities or Orders, may be invited to the Council, but they will have only a consultive vote.

87. 2°. Members of Provincial Councils. (*a*) All the Bishops of the province, the Administrators of dioceses, Abbots or Prelates Nullius, Vicars Apostolic, Vicars Capitular of one of the suffragan dioceses, Prefects Apostolic if there are any in the prov-

ince, ought to be summoned to the Council and, when invited, attend it; they have a decisive vote.

(*b*) Titular Bishops residing in the province may be invited by the president with the consent of the majority of the members having a decisive vote. If convoked they should come and they have a decisive vote unless the contrary be expressly stated in the convocation. This may depend on the decision of those who have invited them.

(*c*) Cathedral chapters or in their place diocesan consultors of the dioceses whose Ordinaries have a right to take part in the Council, ought also to be invited and then they should send as their representatives two of the canons or diocesan consultors whom they appoint in a formal meeting. These deputies have a consultive vote.

(*d*) The major superiors of clerical exempt Orders or monastic congregations (Can. 488, 80) who reside in the province should likewise receive an invitation and accept it, or if prevented from doing so, let the Council know the reason of their absence. They have a consultive vote.

(*e*) The president may ask other ecclesiastics, secular or regular, to assist at the Council and perhaps act as secretaries, notaries, canonists or theologians; these also will have only a consultive vote.

(*f*) Extraprovincial Ordinaries. Bishops who depend immediately on the Holy See and not on any Metropolitan, Abbots or Prelates Nullius, Archbishops without suffragans, do not form part of any province; but, unless they have done so already in accordance with prescriptions of the Council of Trent, they must, with the approbation of the Holy See, choose the nearest Metropolitan, whose suffragans they become in what concerns the Provincial Council. This being done once for all, they have

the obligation of assisting at this Council, in which they have a decisive vote, of obeying its enactments and enforcing them in their own territory. Their cathedral chapters or diocesan consultors are entitled to the same invitation as those of the suffragan Bishops.

88. 5. *Celebration.* 1°. Place. The Code contains no special provision regarding the place of meeting for Plenary Councils, leaving this, no doubt, to the decision of the Pontifical Delegate. For Provincial Councils the president determines it after taking the advice of all those who must assist at the Synod and have a decisive vote. It should be held within the territory of the province, and in the absence of any just reason to do otherwise, the metropolitan church should have the preference.

2°. Attendance. All who have a seat with decisive vote in a Council, whether Plenary or Provincial, ought to assist at it and, if legitimately prevented from doing so, send a procurator to represent them and show just reasons for their absence. The duty being a grave one, only serious causes will dispense from it. Metropolitans and residential Bishops may, without any special reason, send in their place their Coadjutor or Auxiliary to the Plenary Council (Can. 286, §4); the Code does not grant this permission for Provincial Synods. The obligation of obeying the summons to a Council exists also for those who would have only a consultive vote, but it does not bind them so strictly, and they do not send a procurator when unable to attend personally. Procurators have a consultive vote; should one already a member of the Council with a decisive vote be chosen as procurator he would not, for this reason, have two votes.

3°. Procedure. In a Plenary Council the president has full power to determine the manner of pro-

ceeding and the order to follow in the treatment of the various questions; he opens the Council, transfers it if necessary, prorogues and closes it.

The President of a Provincial Council discharges the same functions, but does not decide these matters without the consent of at least the majority of the Fathers.

4. The Council once begun, all its members must remain to the end. Should any have a just cause to withdraw before, they must obtain the approval of the president in a Plenary, of the Fathers in a Provincial Council.

89. 6. *Subject-Matter.* Formerly particular Synods not infrequently took up questions of faith as well as of discipline. The Councils of Carthage and of Orange discussed and condemned Pelagianism and Semi-pelagianism. Their decrees, however, needed the confirmation of the Apostolic See to have a real dogmatic value. In the course of time the Popes reserved to themselves and General Councils strictly doctrinal subjects; particular Synods are not competent, under the present discipline to deal with them, except from the disciplinary point of view, denouncing condemned errors, pointing out dangers to faith, promoting religious instruction, etc.

The Code directs the Fathers in Plenary and Provincial Councils to study carefully and regulate in the most opportune manner according to the needs of every country what pertains to the progress of faith, the preservation of morals, the correction of abuses, the settling not of abstract and doctrinal but of practical and disciplinary controversies, the maintenance or introduction of uniformity in discipline.

90. 7. *Recognition, Promulgation, and Authority.* 1°. Recognition. At the close of a Plenary or Provincial Council the president must forward the

Acts and Decrees to the Holy See for revision and recognition before promulgation. This has been the law at least since Sixtus V (1587); formerly Particular Councils did not have to comply with this formality. In their own sphere they have full legislative authority and their enactments do not need papal confirmation like those of Œcumenical Councils for their validity. The Code does not, in fact, speak of confirmation here, but only of revision and recognition; the Congregation of the Council, to which Sixtus V entrusted this work, carefully studies the Acts to see if they do contain anything contrary to the common law or perhaps too severe or inaccurate; it may make some corrections or additions, but this does not imply confirmation of all the decisions of the Council; they do not become papal laws, nor would they even receive binding force if they happened to be in themselves invalid. The recognition has, however, some effect; it guarantees the canonical character of the Council and the substantial value of its provisions.

The Holy See may and at times does, at the request of the interested Ordinaries, formally confirm the Acts and Decrees of Particular Councils, thus giving them papal authority.

2°. Promulgation. The legislator now leaves it to the Fathers of the Council to determine the manner of promulgating the Decrees duly recognized by the Congregation and to fix the time when they will go into force, whether at once or, for example, within six months. Under the former discipline the Pontifical Delegate promulgated the decrees of Plenary, and Metropolitans those of Provincial Councils, and they obtained force of law at once unless provided otherwise. Individual Bishops had to publish also provincial decrees in their diocesan Synods but this

was not essential for their promulgation. (III Plen. Balt., Tit. Ult.)

3°. Authority. The Decrees of Councils thus legitimately promulgated become binding throughout the whole territory for which they were enacted on all persons they concern. Particular Ordinaries and the Metropolitan himself in the case of a provincial Synod can not dispense from them except in particular cases and for just causes, as the Code explicitly declares. They proceed from a juridical moral body possessing as such a higher authority than any one of the individual members. (Can. 82.)

91. 8. *Conferences of Bishops.* (Can. 292.) 1°. Former Practice. In the past Bishops have gathered together at various times and for different purposes outside of formal Councils. Christian kings in the Middle Ages often invited them to the assemblies of the nation in which both religious and political questions were treated. The Prelates profited by the opportunity to hold their own meetings for the discussion of matters which concerned them more directly. Gradually, in the fourteenth and fifteenth centuries they adopted the practice of assembling separately at stated times and independently of the political gatherings. (Thomassin, l. c., c. 46, 47, 51, 54-56.) They did not call these meetings Councils because they often dealt with temporal more than spiritual matters; they did not have the papal sanction and did not adhere to canonical forms. Such assemblies of the clergy played an important part in the life of the Church, particularly in France from the fourteenth to the end of the eighteenth century. (Serbat, Assemblées du Clergé de 1561-1615, Paris, Champion, 1806; Bourlon, Les Assemblées du Clergé et le Jansénisme, Paris, Bloud.)

In modern times informal meetings of Bishops at

more or less regular intervals have been also held in various countries; the custom has existed in Italy, particularly in Umbria, since 1849. Leo XIII, by a circular letter of the Cong. of Bishops and Regulars of Aug. 24, 1889, gave his formal sanction to the practice and laid down some rules for the Ordinaries to follow in these conferences. This concerned only Italy but now the Code has ordered these episcopal meetings for the whole Church.

92. 2°. Present Law. (*a*) Unless otherwise provided by the Holy See for certain countries, the Bishops of every ecclesiastical province must meet at least every five years at the residence of the Metropolitan or of one of the Suffragans.

(*b*) Regularly the Metropolitan should call these meetings, but if he can not do so for whatever reason, vacancy of the See, incapacity or other reason, this duty devolves upon the Bishop who is senior in the province.

(*c*) All the local Ordinaries of the province should attend the conference and also the extraprovincial Prelates, Metropolitans, Bishops or Abbots Nullius who have to attend the Provincial Council.

(*d*) The purpose of these gatherings is for Ordinaries to consider together the means of promoting the interests of religion in their territory and to prepare the matter for the next Provincial Synod. At each meeting they determine the place for the following one.

Where a different discipline approved by the Holy See existed the Code leaves it unchanged. Thus in Italy the Bishops meet every year and not necessarily by ecclesiastical provinces but by regions, *v.g.* the Bishops of Campania, of Sicily, of Sardinia (Consis. Cong., Feb. 15, 1919; A. A. S., 1919, p. 175; Canoniste Contemporain, Mai, 1919, p. 223.)

Chapter VIII

Vicars and Prefects Apostolic

(Can. 293-311.)

(Wernz, II, n. 698; Blat, p. 259; G. Cocchi, De Clericis in Specie, p. 130; De Religiosis et Missionariis, Feb., Ap., 1914; Periodica de re Canonica et Morali, Nov., 1920, p. 19.)

93. 1. *Origin.* The title Vicar Apostolic taken in its general sense may serve to designate any representative of the Holy See; thus we have seen it given to the Bishops of Thessalonica and Arles, who exercised papal jurisdiction. Vicars Apostolic administered some dioceses of Ireland in the seventeenth century and they governed the English Church at various intervals beginning in 1598, after the extinction of the ancient hierarchy till its restoration in 1850. These ruled canonically established dioceses deprived of their regular pastors by heretics. The Vicars and Prefects Apostolic whom the Code treats of here have charge of territories which were never erected into dioceses.

Formerly missions among the infidels were entrusted to Bishops whom the Holy See sent to preach the Gospel and found new Christian Churches; thus the West Indies and Japan had their hierarchy almost from the beginning of evangelization. But since the seventeenth century the practice has prevailed in newly evangelized countries to establish first Prefectures and Vicariates Apostolic, and Dioceses only when the progress of the Church permits a sufficiently complete organization.

94. 2. *Office.* The Code has completed and in certain things modified, the former legislation on this point which, contained chiefly in a series of successive particular decrees, had remained fragmentary and often indefinite.

Vicars and Prefects Apostolic administer the territory committed to their care, not in their own name like residential Bishops, but in the name and by the authority of the Holy See. (Can. 293; 1350.) The legislator classes them, however, among local Ordinaries, not among delegates (Can. 198); their jurisdiction clearly comes under the definition of the ordinary—vicarious one. It is ordinary because attached to their office, vicarious because exercised in another's, *i.e.* the Pope's name. The Congregation of Propaganda had declared (Feb. 14, 1702) that no Bishop, Metropolitan, Primate or other dignitary had the right to interfere in their territory but they in turn have no powers outside of the district assigned to them.

Ordinarily, although not necessarily, Vicars Apostolic receive the episcopal consecration and the title of some of the ancient diocese now in the hands of infidels or schismatics. The Brief erecting the Vicariate Apostolic of Alaska provided that the Vicar would possess the episcopal powers of Order (Dec. 22, 1916; A. A. S., 1917, 9, 99, but no such provision is found, for example, in the Brief concerning the Vicariate Apostolic of Kassai (June 13, 1917).

Prefects Apostolic as a rule are not Bishops, and usually they preside over more imperfectly organized missions, otherwise they do not differ from Vicars Apostolic.

95. 3. *Appointment.* The Holy See alone through the Propaganda appoints Vicars and Pre-

fects Apostolic. They enter upon their functions after taking possession of their district, which they do by presenting respectively if Vicars the Apostolic Letters in form of Brief or Bull, and if Prefects the Letters patent of the Propaganda, to the pro-Vicar or pro-Prefect or any other ecclesiastic who governs the district during the vacancy as provided by law (Can. 309); they may do so personally or by proxy.

4. *Powers.* 1°. General principle implied in former decrees and now explicitly and authentically affirmed: Vicars and Prefects Apostolic enjoy in their respective territories the same rights and faculties as residential Bishops in their own dioceses except those which the Holy See may reserve, either in the Code, or by subsequent law or decree of a Congregation, general or particular, affecting only a certain region. Reservations are not presumed but require proof. Thus Vicars and Prefects have power to give jurisdiction to confessors, secular and regular, to administer the sacraments, prescribe public prayers and occasional fasts and feasts, enact statutes for their territory, impose censures, judge in the first instance causes not reserved to the Holy See, proceed against offences pertaining to the ecclesiastical forum, administer ecclesiastical property which does not belong to exempt religious, approve and forbid books.

They receive, besides, from the Congregation of Propaganda extensive delegated faculties, most of which they can subdelegate (Can. 199) not with permission, however, to subdelegate them again. (Blat, De Rebus, p. 763; Periodica, (76), 1922.)

96. 2°. Appointment of Vicar Delegate. Under the former legislation Vicars Apostolic and superiors of missions generally had obtained the faculty to

appoint a vicar or pro-vicar, called also in some texts Vicar General, who would share their powers during their life and administer the mission after their death. (Benedict XIV, Jan. 26, 1753; Aug. 8, 1755, Propag., Dec. 9, 1822.) As the Code expressly assimilates Vicars Apostolic to Bishops (Can. 294), some concluded that they enjoyed also the privilege of having a Vicar General; still in the Canon (198) which enumerates the Prelates who possess ordinary jurisdiction we find no mention of Vicars-General of Prefects or Vicars Apostolic along with those of Bishops and Abbots or Prelates Nullius, and the Code provides for the appointment of pro-Vicars or pro-Prefects who administer the mission during the vacancy but have as such no special powers during the life of the Vicar or Prefect. The Propaganda, interrogated on this subject, answered that, by common law, Vicars or Prefects Apostolic can not appoint a Vicar General like residential Bishops but only grant particular delegations; at the same time it announced that the Holy Father had given to all Ordinaries in missionary countries power to appoint a Vicar Delegate with all the jurisdiction in temporal and in spiritual matters which Vicars General strictly so called enjoy by common law, not excluding the privilege of using the special faculties which those Ordinaries receive from the Propaganda and of executing pontifical rescripts. They may appoint several Vicars Delegate if the extent of the territory or diversity of rites require it. By the same occasion the Pope validated all that might have been invalidly done by missionaries erroneously acting as Vicars General. (Dec. 8, 1919; A. A. S. 1920; Canoniste Contemporain, Mai, 1920, p. 229.)

97. 3°. Power of Order. Vicars and Prefects Apostolic who have the episcopal character possess

the same powers of Order as residential Bishops; even those who have not, may by express concession of the Holy See (Can. 294), within the limits of their territory and for the duration of their office: (*a*) give all the blessings, as distinct from consecrations, reserved to Bishops, excepting only the pontifical blessing imparted with a threefold sign of the cross; (*b*) consecrate chalices, patens, and portable, not fixed, altars, but all this with Holy Oils blessed by the Bishop, and the consecration of churches and fixed altars remaining reserved to Bishops, whom, however, Vicars and Prefects may in their territory depute for this purpose; (*c*) grant an indulgence of 50 days, which power they can not delegate nor use in favor of the deceased; (Can. 913); (*d*) administer the sacrament of Confirmation (Can. 782); (*e*) give Tonsure and Minor Orders to their subjects, secular and regular, following in this matter the rule of seculars, and to others also with the proper dimissorial letters; (f) erect privileged altars in their parish or quasi-parish churches (Can. 916).

The conditions here laid down, like presence within the territory, duration of the office and use of the Holy Oils, are required for the lawfulness of the blessings (Can. 1147 §3) and for the validity of consecrations, of indulgences (Can. 912), of confirmations (Can. 783) and ordinations (Can. 957).

4°. Admission of Missionaries. (Can. 295.) As Vicars and Prefects Apostolic usually have not a sufficient native clergy of their own, the Congregation of Propaganda or superiors of Religious Orders send to them missionaries; but from all these, by whomsoever they may be sent, they have the right and the duty to demand credentials and letters showing their appointment, destiny, or deputation; in case of re-

fusal they should forbid them the exercise of any ecclesiastical function.

From them also all missionaries, even Regulars, must ask for permission to exercise the sacred ministry, which includes preaching, hearing confessions, etc.; this permission should not be refused except in individual cases and for grave reasons affecting the person concerned.

98. 5°. Authority over Religious. (Can. 296-298.) (*a*) As missionaries Religious, even Regulars enjoying the privilege of exemption, are subject to the Vicar's or Prefect's jurisdiction and regulations, to his visitation and supervision, to his correction and punishments, not excluding censures, in all that pertains to the following matters: the government of the missions, the care of souls, the administration of any one of the Sacraments without distinction of subject or other circumstances, the direction of schools, the offerings made to the mission and the execution of legacies in favor of the same mission. Offerings and legacies must be considered as made in favor of the mission whenever the benefactors manifest explicitly or implicitly the intention of benefiting the Vicariate or Prefecture Apostolic or some work of which the Vicar or Prefect has the administration.

(*b*) As Religious, missionaries belonging to an Order or Congregation depend on their respective superiors, and the Vicars or Prefects Apostolic must not interfere, outside of the cases specified by law, in what concerns religious discipline and comes under the authority of the superior of the Order or Congregation; but this authority extends also, in various respects, to matters like the administration of the Sacraments, the care of souls mentioned above as subject to the control of the Vicar or Prefect, hence

the possibility of conflicting commands or directions. In such cases the Vicar's or Prefect's precept must prevail, at least till otherwise decided by the Holy See, to which the law permits recourse but only *in devolutivo*.

(*c*) Special statutes, general or particular, may in some matters give more independent power to superiors, but they require papal sanction, as they constitute an exception to the general discipline. Thus the Code provides that to remove a Religious in charge of a parish or quasi-parish his superior has only to notify the local Ordinary and does not need his consent, although this pertains to the administration of parishes. Some Regulars have a privilege of complete exemption from the jurisdiction of Bishops in regard to punishments; the missions entrusted to the Society of Jesus have their own statutes approved by the Holy See.

(*d*) On account of the special needs of missionary countries Vicars and Prefects Apostolic have power to compel Religious, even members of exempt Orders, to do parish work. They must not, however, have recourse to this measure till they find it morally impossible to provide for the needs of their people with the secular clergy; they should consult the superiors of these Religious and listen to their observations or objections, but they do not need their consent. This power does not extend to Religious not affiliated with the Vicariate or Prefecture whom special statutes approved by the Holy See would free from the obligation of accepting this kind of work.

(*e*) Settling of controversies. Should disputes arise about matters pertaining to the care of souls between individual missionaries, or religious communities whose members labor in the Vicariate or Prefecture, or between missionaries and other per-

sons, the Vicar or Prefect must endeavor as soon as possible to bring the parties to an amicable understanding and, if necessary he may impose his decision, which will hold until set aside by the Holy See, to which recourse remains open, but only *in devolutivo.*

99. 5. *Duties of Vicars and Prefects Apostolic.* (Can. 299-307.) 1°. Visit *ad Limina.* The rule regarding the visit *ad Limina Apostolorum* is the same for Vicars Apostolic as for residential Bishops (Can. 299, 341); only if they can not without grave inconvenience visit personally the Roman sanctuaries and present themselves to the Sovereign Pontiff, they may, without having to obtain a special permission, discharge this obligation through a procurator, neither have they to depute for this one of their missionaries, but they may take even a resident of Rome.

The Code does not mention here Prefects Apostolic; this law therefore does not bind them.

2°. Report to the Holy See. (Can. 300.) (*a*) As prescribed for residential Bishops (Can. 340), both Vicars and Prefects Apostolic must every five years submit to the Holy See, *i.e.,* to the Congregation of Propaganda, a full and accurate report on their own pastoral Office and work, and on all that pertains to the state of the Vicariate or Prefecture, to the missionaries, the Religious, the life of their people, the frequenting of the schools, and generally on everything that touches the spiritual welfare of the faithful committed to their care.

The quinquennial periods begin for America and adjacent islands with the year 1914, hence reports have to be sent in 1924, 1929, etc.; for Africa, Asia, and Australia they begin in 1915 and the turn for reports from these countries comes in 1925, 1930, etc.

Reports must be written in Latin and signed by

the Vicar or Prefect Apostolic and at least one of his consultors. The Consistorial Congregation published in 1918 a form to be used in future, beginning with the year 1921. (A. A. S. 1918, p. 487.)

Ordinaries do not have to send the report during the first or second year of their administration.

(*b*) Vicars and Prefects Apostolic must, besides, towards the end of each year send a statement to the Holy See giving the number of converts and Baptisms during the year, the Sacraments administered, and any other information of some importance.

100. 3°. Residence and Visitation of the District. (Can. 301.) (*a*) Vicars and Prefects must reside in the territory committed to their care, not necessarily in any particular place or mission, and except for a grave and urgent reason which does not admit of delay they should not absent themselves for any notable length of time, *v.g.* two or three months in a year (Can. 338) without consulting the Holy See.

(*b*) They ought to visit their district whenever in their prudent judgment they deem it necessary; they fulfill this duty personally if they can or through a procurator if legitimately impeded. The visitation bears on all that concerns faith, morals, the administration of the Sacraments, the preaching of God's word, the observance of feasts, divine worship, the education of the young, and ecclesiastical discipline.

4°. Appointment of Council. Vicars and Prefects Apostolic should appoint a Council consisting of at least three of their more experienced and more prudent missionaries, whom they ought to consult at least by letter on the more important and more difficult matters.

As circumstances might not easily permit it, the Code does not command to hold regular meetings of

these consultors, nor does it determine except in a general way when their advice is to be taken; they have evidently only a consultive vote.

5°. Annual Meeting of Missionaries. (Can. 303.) Once a year if not more frequently Vicars and Prefects ought to gather together, at the most opportune time, at least the principal missionaries of their territory, both Religious and secular, in order to profit by each one's experience and advice for the better administration of the mission.

101. 6°. Archives and Councils. (Can. 304.) (*a*) What the Code prescribes regarding the archives of dioceses (Can. 375) applies likewise to those of Vicariates and Prefectures, making allowance for modifications necessitated by differences of places and persons.

(*b*) The legislation on Plenary or Provincial Councils holds in countries subject to the Propaganda in what, and in as far as, they are applicable. Vicars and Prefects Apostolic can not hold Provincial Councils, since they have no metropolitan authority and no provincial organization. They can hold regional meetings with the permission of the Holy See and, with its sanction, these would have the legislative power of Councils. Where a regular hierarchy exists, as in Japan, Councils may and should be held.

The rules regarding diocesan Synods apply to Vicariates Apostolic; the Code does not mention Prefectures in this connection, therefore it does not include them in these prescriptions.

Whilst the law commands the celebration of Councils and Synods, it does not fix for them, in countries subject to Propaganda, any particular time or frequency, leaving this to the prudence and conscience of Ordinaries. The decrees of Councils must be recognized by the Propaganda before publication.

7°. Formation of Native Clergy. (Can. 305.) The Congregation of Propaganda, writing to the superiors of missions in India, Nov. 28, 1630, urged them to select among their best Christians suitable candidates for the clerical state whom, after careful instruction and sufficient training in the practice of virtue, they would promote to Holy Orders, the priesthood not excluded; and it gave as chief reasons for this that such was the practice of the Apostles and of the early Church, that native priests more readily win the confidence of the people, knowing the language, the customs, and the dispositions of their fellow-countrymen. In another communication on the same subject the Congregation added that by the multiplication of native ministers of the Gospel, the Christian religion would strike deeper roots in the country, as persecutors could not so easily banish them and religion with them. (Feb. 22, 1663.)

Popes and Congregations have, in numerous Instructions and Decrees, reaffirmed these principles and insisted on this as one of the main duties of Ordinaries in missionary countries. (Clement IX, *Speculatores,* Sept. 13, 1669; Leo XIII, *Ad Extremas Orientis,* June 24, 1893; Prop. Nov. 3, 1845; Oct. 18, 1883.)

The Code officially sanctions previous provisions on the subject and imposes on the conscience of Prefects and Vicars Apostolic the strict and grave obligation of doing all in their power, within the limits of prudence, to prepare for the priesthood some of their native Christians whom they will ordain if after sufficient trial they find them properly qualified.

102. 8°. Application of the sacrifice of the Mass. (Can. 306.) Former Instructions recommended to Vicars and Prefects, as an act of charity, to offer the

Holy Sacrifice for their people from time to time. The present law makes it obligatory for them at least eleven times a year, on the Feasts of the Nativity of Our Lord, Epiphany, Easter, Ascension, Pentecost, Corpus Christi, Immaculate Conception, Assumption, St. Joseph, SS. Peter and Paul, All Saints. As for residential Bishops, this obligation is personal, real, and connected with certain days. (Can. 339.)

9°. Dismissal of Missionaries. (Can. 307.) (*a*) Without consulting the Holy See, Vicars or Prefects may not grant to missionaries sent to them by Rome, *i.e.* ordinarily through the Propaganda, permission permanently to leave the Vicariate or Prefecture or go elsewhere, nor may they expel them in any way, directly or indirectly, formally or in an equivalent manner. Permission for a temporary absence would not necessitate recourse to Rome and the Law mentions here explicitly missionaries sent by the Holy See, not any others.

(*b*) In case of public scandal they may remove the culprit without delay, but before acting they must take the advice of their consultors, although they do not need their consent, and when it is question of a Religious they should if possible notify his superior. As soon as convenient they must let the Holy See know what they have done.

103. 6. *Honorary Privileges.* (Can. 308.) 1°. Vicars and Prefects who have the episcopal character enjoy the honorary privileges which law grants to Titular Bishops. (Can. 309.) Not being in their diocese they have no cathedral church and no chapter, hence they can not appoint honorary canons; they have no right to the seventh candle at Mass, nor to the episcopal throne, the Cappa Magna, mention in the Canon of the Mass or in the Office, commemoration on the anniversary of their consecration.

2°. If they have not the episcopal character they are entitled to the insignia and privileges of the Prothonotaries Apostolic *de numero participantium,* but only during their term of office and in their territory. Pope Pius X gave the official list of these privileges in the Motu Proprio *Inter Multiplices* of Feb. 21, 1905. (A. S. S., vol. 37, p. 493; Eccl. Rev., June, 1905, p. 612; July, 1905, p. 73.) It will suffice to mention a few of them here:

Privilege of wearing the dress of regular Prelates, violet socks, collar and cassock with red trimmings, and buttons, black biretta with a red tuft, mantelet over the rochet. For less solemn occasions they have a second dress called plain, piano, which consists of violet socks and collar, black cassock with red trimmings, a violet belt and light cloak;

Privilege of wearing a ring at all times, and a mitre when they celebrate Pontifical Mass outside of Rome with the permission of the local Ordinary.

When going to the altar to celebrate Pontifical Mass and on their way back they may wear a pectoral cross of gold having a single gem and hanging from the neck on a cord of red silk and gold thread;

Privilege of the portable altar and right to the title of Monsignor.

104. 7. *Appointment of Possible Substitutes, their Powers and Duties.* (Can. 309-310.) 1°. As soon as they enter their territory Vicars and Prefects Apostolic to whom the Holy See has not already given a Coadjutor with right of succession, must appoint a pro-Vicar or pro-Prefect, who will fill their place in case of need. He may be either a secular or a Religious, provided he possesses the necessary qualifications.

Benedict XIV introduced first this discipline by the Const. *Ex Sublimi,* Jan. 26, 1753, in order

that missions should not remain without a head, whenever a superior's activity ceased by death or otherwise, till a successor came.

2°. The pro-Vicar or pro-Prefect has, as such, no special powers during the lifetime of the Vicar or Prefect; he might be also Vicar Delegate and thus have a share in the government of the mission. When the Vicariate or Prefecture becomes practically vacant by the death, captivity, exile, relegation, incapacity, or inability of the Titular, so that he can not communicate with his subjects even by letter (Can. 429) the pro-Vicar or Prefect assumes full control and retains it till the Holy See provides otherwise.

Under similar circumstances the episcopal jurisdiction in a diocese passes to the Vicar-General not to the Chapter or Vicar Capitular except in cases of real vacancy by death, renunciation, transfer and privation. (Can. 430.)

3°. The pro-Vicar or Prefect who has succeeded the Titular must in turn and for the same reasons choose a substitute who will step into his place should he go out of office.

4°. If it happened that the Vicar or Prefect or the substitute had designated no one to fill his place, the senior missionary has *ipso facto* delegation from the Holy See to take charge. Seniority means actual presence and longest stay in the Vicariate or Prefecture, counting from the presentation of the letters of appointment or its equivalent. Seniority in the priesthood would next be considered in case of equality.

5°. Those who come thus in charge of a Vicariate or Prefecture must notify the Holy See without delay; meanwhile they may use all the faculties,

ordinary and delegated, which the Titulars enjoyed, except those committed to them for personal reasons.

105. 8. *Temporary Administrators of Missions.* One appointed to rule a Vicariate or Prefecture for a determined period of time must continue in the administration and the use of faculties granted to him, even after his term has elapsed, until the successor has taken canonical possession of the office, so that there may be no interruption in the government.

Chapter IX

Administrators Apostolic

(Can. 312-318.)

(Wernz, II, n. 704; Blat, p. 274; Cocchi, n. 229; Catholic Encyclopedia, Administrator.)

106. 1. *General Notions.* (Can. 312.) An Administrator Apostolic as understood here is a Prelate appointed by the Sovereign Pontiff, for special and grave reasons, to rule in his name a canonically erected diocese.

Like the Vicar or Prefect Apostolic, the Administrator exercises jurisdiction in the name of the Pope and shares in his supreme authority, but instead of a mission he governs a regularly established diocese.

Normally a diocese is administered by a Bishop or during the vacancy by a Vicar Capitular, but the Sovereign Pontiff, who possesses immediate and ordinary jurisdiction over the whole Church and every portion of it, may place one of his representatives over any individual diocese to rule it in his name. He does not do so, however, except for special and grave reasons, such as, for example, unreasonable delay in appointing a Vicar Capitular, election of an unworthy one, opposition of civil officials to the legitimate Ordinary and his exclusion from the diocese, serious financial, religious, or political difficulties.

The Holy See may appoint an Administrator for a limited time or permanently, for a vacant see or for one which has its Ordinary.

2. *Taking Canonical Possession.* (Can. 313.) Be-

fore entering on his functions the Administrator must, if sent to a diocese whose Ordinary has full possession of his faculties and resides in the diocese, present his letters of appointment to the Bishop himself and to the Chapter in presence of its secretary or of the Chancellor of the Curia as prescribed by Can. 334, §3 for a new Bishop.

If the Ordinary of the diocese has lost the use of his faculties or dwells elsewhere, or if the see is vacant, if suffices for the Administrator to present his letters to the Chapter.

107. 3. *Rights, Duties, and Privileges of Administrators.* (Can. 314, 315.) They are determined by the Letters of appointment and by the following provisions of the common law unless the Letters expressly rule otherwise:

1°. An Administrator appointed permanently enjoys the same rights and honors and has the same obligations as a residential Bishop. This should imply the right of holding a Synod and conferring Orders, about which canonists used to raise some doubt.

2°. One appointed for a limited period of time has (*a*) the rights and duties of a Vicar Capitular as laid down in Can. 435-442. He may, however, while the see is not vacant, make the diocesan visitation in the manner prescribed by law and he is not bound like the Bishop or the Vicar Capitular to say Mass for the people;

(*b*) He enjoys the same honorary privileges as a Vicar or Prefect Apostolic, *i.e.* those of a Titular Bishop if he has the episcopal character; and if he has not, those of a Prothonotary *de numero participantium.* (Can. 308.)

(*c*) A Bishop transferred from one see to another retains the administration of the former till he takes

possession of the latter, and he remains entitled in the diocese which he administers to the same honors as a residential Bishop.

108. 4. *Relation to the Bishop.* (Can. 316.) In order to avoid confusion and conflict of authority, by the appointment of an Administrator, the jurisdiction of the Bishop, if the see is not vacant, as well as that of his Vicar-General, is suspended. This suspension seems absolute, since the text of the law suggests no restriction and makes no distinction.

The Bishop has no authority over the Administrator, but neither has the latter authority in matters which concern the Bishop personally, and he could not proceed judicially against his Vicar-General nor punish him in any way for acts of the former administration.

5. *Administrator's Jurisdiction Impeded or Ended.* (Can. 317.) An Administrator's jurisdiction may be impeded, like a Bishop's, by relegation, captivity, exile, inability, or censure; it may come to an end by death or lapse of time. In such cases the Holy See should at once be informed of this, apparently, although the Code does not say so, by the one who must act as temporary Administrator. Meanwhile, if the see is vacant or its Ordinary has not full use of his faculties, the government of the diocese passes to the Vicar-General of the Administrator or to the ecclesiastic whom he has appointed for this purpose, unless the Holy See has provided otherwise.

If the diocese has still its Ordinary, he temporarily rules it again except in case the Holy See would have beforehand made some other arrangement.

6. *Cessation of Jurisdiction.* The Administrator's jurisdiction does not cease by the death of the Roman Pontiff from whom he receives it nor by that of the Bishop whose diocese he administers. The

Chapter, therefore, does not have to elect a Vicar Capitular.

The Administrator's jurisdiction comes to an end in cases of vacancy, when the new Bishop takes possession of his See. It would cease also by removal from office, lapse of time, restoration of the Ordinary to his regular functions.

Chapter X

Inferior Prelates: Abbots and Prelates Nullius

(Can. 319-328.)

(Wernz, n. 815; Thomassin, P. I, L. III, c. 26-41; Maroto, n. 757; Blat, p. 278; Cocchi, n. 234; Catholic Encyclopedia, Abbot; Dictionnaire de Théologie, Abbé; Dictionnaire d'Archéologie, Abbé.)

109. 1. *General Notions.* These inferior Prelates occupy the lowest rank among those who share in the power of the Supreme Pontiff, exercise ordinary jurisdiction in his name and are immediately subject to him. They rule over a territory which would regularly form part of a diocese but has been placed under the care of a direct representative of the Holy See.

In the early Church the jurisdiction of Bishops extended to all places and persons. About the fifth or sixth century Councils, Popes, and even Bishops commenced to grant to some monasteries independence from the local Ordinary's authority in certain matters, such as elections and administration of temporal matters. Gradually the privilege grew until it became in a number of cases complete exemption from episcopal rule. Canonists then distinguished three kinds or degrees of exemption: passive, active but partial, active and total. Some Prelates enjoyed independence from the Bishop's authority in the government of persons and things belonging to a particular monastery or church; others exercised also jurisdiction over the clergy and people of a certain

territory which, however, formed part of a diocese; others, again, had a territory of their own, never included in any diocese or detached from it and called for that reason *Nullius, i.e.* of no diocese, in which they possessed practically full episcopal powers.

The Code treats of exemption in general and principally of the first kind in the second part of this book, on Religious; here it deals with the third kind or with Prelates really *nullius* and only with those, moreover, whose Abbey or Prelacy consists at least of three parishes. The common law does not apply to smaller ones like the Abbey of Einsiedeln in Switzerland, whose territory does not go beyond the wall of the monastery. These have special rules of their own.

The privilege of exemption was granted first to monasteries and to their superiors who had and retained the title of Abbot; when afterwards, about the eleventh century, secular chapters, churches, or colleges obtained the same privilege, the Prelate who presided over them took in some cases the name also of Abbot, although more frequently that of Prelate Nullius. Even under the present law an ecclesiastic, whether secular or regular, who presides over a territory of his own, separated from any diocese, with its clergy and people, is called Abbot or Prelate Nullius, according as his church has received the abbatial or simply the prelatial dignity. (Can. 319.)

Towards the close of the Middle Ages Abbots had acquired a position of power and influence regarded everywhere as one of the highest distinction. "In Germany eleven Abbots held rank as princes of the Empire and with all the rights and privileges of princes took part in the deliberations of the Diets. The Abbots of Fulda exercised even sovereign jurisdiction over ten square miles around the Abbey. In

the Parliament of England Abbots formed the bulk of the spiritual peerage. In France, Spain, Italy, and Hungary their influence and power were equally great."

The Council of Trent, yielding to the requests of Bishops, curtailed their privileges in various respects, and several causes have contributed in modern times to reduce their numbers and lessen their authority. Pius VII suppressed all Abbeys Nullius in France by the Bull of Nov. 29, 1801. Recent statistics give as existing at present nine Prelacies Nullius, sixteen Abbeys, one Archabbey, and one Priory Nullius.

Formerly Bishops and Particular Councils granted the privilege of exemption, both passive and active, but for a long time the Popes have reserved this right to themselves, nor do they use it frequently. In the last century the tendency has rather been to withdraw or limit it. Pius X established, however, the Abbey Nullius of Belmont, the only one in the United States, with part of North Carolina as its territory (June 8, 1910), and Benedict XV erected another in Brazil (June 18, 1920).

110. 2. *Appointment and Qualifications of Abbots and Prelates Nullius.* (Can. 320, 321.) 1°. Their nomination and appointment belong by right to the Roman Pontiff; if, however, other persons, physical or moral, such as patrons or a collegiate body, had legitimately acquired the privilege of presentation or election, the Code does not intend to take it away from them, but the Pope must always give the institution or the confirmation.

2°. In such elections for the designation of an Abbot or Prelate Nullius, an absolute majority is required for the validity, *i.e.* one more than half of the votes cast, not counting those which are null. A relative majority would not suffice even after one

or two ineffective ballots, as it does in other cases. (Can. 101.) If particular statutes, constitutions, or customs demand a larger majority, for example, two-thirds of the votes, they remain in force under the present law. On the contrary, those which would admit as sufficient a relative majority must be considered as abrogated by the Code.

3°. For Abbots or Prelates Nullius the common law requires the same qualifications as for residential Bishops.

111. 3. *Enthronement and Blessing.* 1°. Abbots and Prelates Nullius ought not, under any pretext, personally or through others, interfere in the government of the Abbey or Prelacy to which they are appointed till they have taken possession of it in the manner prescribed by law for residential Bishops, *i.e.* by presenting the Apostolic Letters of appointment to the Chapter in presence of its Secretary or of the Chancellor of the Curia (Can. 334, §3), this under pain of exclusion from the office. (Can. 2394.) The Code allows, however, the Administrator of a diocese who would be elected Bishop to continue in the discharge of his functions (Can. 334, §2); the same rule applies, no doubt, to the Administrator of an Abbey or Prelacy.

2°. All Abbots or Prelates Nullius have not to receive the blessing, but only those upon whom this obligation is imposed by the constitutions of their Order if they or their Abbey belong to a religious community, or by Apostolic precept, as contained perhaps in the Letters of appointment, in a particular statute, etc.; these must receive it within three months from the moment the Apostolic Letters reached them, unless legitimately prevented.

The present law, repealing a former decree, leaves them free to go for this to any Bishop they choose,

not to an Abbot, provided, of course, he be in communion with the Holy See and of the same rite.

The Roman Pontifical gives the form of this blessing, which bears some resemblance to the Consecration of a Bishop.

112. 4. *Duties and Powers.* 1°. Abbots and Prelates Nullius have the same obligations as residential Bishops have; thus they must say Mass for their people, make the canonical visitation of their territory and the visit *ad limina,* etc.

2°. They have also the same ordinary powers as Bishops in their dioceses; hence (*a*) in regard to jurisdiction they possess full legislative, judicial, and coercive authority. It would seem, therefore, that, although the former discipline did not allow them to do so, they may now, since the present law does not express any restriction, hold Synods, have concursus for parishes and appoint synodal examiners. They may have a Vicar-General on the same conditions as a residential Bishop.

(*b*) As to the power of Order, if they have received the episcopal consecration, they may do all that a residential Bishop does in his diocese, not excluding the administration of the sacrament of Orders and the concession of dimissorial letters for ordination.

Those who have not the episcopal character but have been blessed, if required of them, as said before, may, like Vicars and Prefects Apostolic, in the same condition (Can. 294, §2), give all blessings reserved to Bishops, excepting only the pontifical blessing, consecrate chalices, patens and portable altars with oil blessed by the Bishop, grant indulgences of fifty days, administer Confirmation and confer Minor Orders. They may, besides, consecrate immovable

altars and churches, which Vicars and Prefects Apostolic have no power to do.

113. 5. *Chapters or Consultors.* (Can. 324, 326.) An Abbey or Prelacy Nullius should regularly have its own chapter, which will be governed by its own law and constitutions, if it is a Religious one, and by the common law if secular.

In case a secular Prelacy Nullius would not have any chapter, consultors should be appointed instead, as the law prescribes for residential Bishops (Can. 423-428.) Religious Prelacies Nullius always have a chapter.

6. *Honorary Privileges.* (Can. 325.) Even though not consecrated Bishops, Abbots and Prelates Nullius may, in their territory, use the pontifical insignia, like the mitre and pastoral staff with the throne and canopy; they may also celebrate pontifical functions, solemn Mass, Vespers, processions. Outside of their territory they may pontificate only with the permission of the local Ordinary, but they need no permission to wear the pectoral cross, a ring set with a precious stone, and a violet skull-cap.

114. 7. *Vacancy or Quasi-Vacancy.* (Can. 327.) Abbeys and Prelatures Nullius become vacant and quasi-vacant or impeded in the same manner as episcopal sees, by the death of the incumbent, his transfer, resignation, removal, etc.

1. When a Religious Abbey or Prelacy becomes vacant the ruling power passes to the Religious Chapter unless the constitutions provide differently.

If the vacancy occurs in a secular Prelacy, the administration devolves on the Canons or Consultors.

In both cases, the Chapter, secular or regular, or the Consultors must within eight days appoint, as decreed for the vacancy of an episcopal see (Can. 432) a Vicar Capitular who will govern the diocese

till another Abbot or Prelate be appointed and take canonical possession.

2. When there is quasi-vacancy, or when an Abbot or Prelate becomes unable to fulfill his Office in the sense explained when treating of Bishops (Can. 429), the same rules hold as for the quasi-vacancy of episcopal sees.

115. 8. *Roman Prelates and Members of the Papal Household.* (Can. 328.) The title of Prelate is also given to certain ecclesiastics as an honorary distinction, although they enjoy no power of jurisdiction, because they belong as it were to the family of the Sovereign Pontiff and have a special connection with the Roman court. They are divided into several classes.

First among them we have the Prothonotaries Apostolic, subdivided into (*a*) Prothonotaries *participantes,* only seven in number; (*b*) Prothonotaries *supranumeraii;* (*c*) Prothonotaries *ad instar;* and (*d*) Prothonotaries *honorarii.* Next come the Auditors of the Rota, the Domestic Prelates, Secret Chamberlains, Honorary Chamberlains, Papal Chaplains, and others.

Some ecclesiastics occupying various positions in the papal court enjoy some of the Prelates' privileges without having the title. The rights, prerogatives, insignia, and functions of all these, whether Prelates or not, are determined by the rules and traditions of the Apostolic Palace.

TITLE VIII

OF THE EPISCOPAL POWER AND OF THOSE WHO SHARE IN IT

(Can. 329-486.)

116. The episcopate constitutes the second degree in the hierarchy of jurisdiction instituted by Christ. After treating of the Pope's primacy, which constitutes the first, and of the Prelates who, by canonical provision partake in various measures of his authority, the Code proceeds in this Title to the exposition in eleven distinct chapters of the rights and duties of the Bishops and of those who obtain by ecclesiastical law a participation in their power and mission: Coadjutor and Auxiliary Bishops, Diocesan Synods, Diocesan Curia, Chapters and Diocesan Consultors, Vicars Capitular or Administrators, Vicars Forane, Pastors, Parochial Vicars, Rectors of churches.

Chapter I

Of Bishops

(Can. 329-349.)

(Bouix, De Episcopo; Wernz, II, n. 730; Thomassin, 1. c., P. I. L. I; Catholic Encyclopedia, Bishop; Dictionnaire de Théologie Catholique, Evêque; Dictionary of Christian Antiquities, Bishop; Bingham, o. c., Book II; Blat, o. c., p. 282; Cocchis, o. c., n. 247; Vermeersch, o. c., n. 314.)

I. NATURE OF THE EPISCOPAL OFFICE.

(Can. 329.)

117. The Code defines Bishops as successors of the Apostles, placed by divine institution over par-

ticular churches, which they rule with ordinary power under the authority of the Roman Pontiff.

1. As founders of the Christian Church and first preachers of the Gospel, the Apostles enjoyed certain prerogatives of a personal and transitory character which died with them; but Our Lord had entrusted to them a work and consequently conferred upon them powers destined to continue till the end of the world. In this they have as their real and true successors the Bishops, to the exclusion of priests, deacons, or any one else.

2. Thus the divine institution of the episcopal office is contained in the command given to the Apostles under St. Peter to teach all nations and to administer His kingdom to the end of time, which supposes a perpetuation of the Apostolic College, not in exactly the same form, because of the change in circumstances, but by a continued succession of pastors, who rule the particular churches according to the system inaugurated by the Apostles themselves. (Acts xx, 28; I. Pet. v, 2; Titus i, 5-7.)

3. The power of the Bishops, as attached to their office and flowing from a divine mission, is ordinary in the fullest sense of the term, not delegated nor vicarious; they exercise it in their own name as received directly from Christ.

4. Their authority, however, must remain subordinated to that of the Pope as the head of the body of which they are the members. Moreover, whilst divine law calls for a body of pastors to govern particular churches, it does not and could not determine the portion of the church each one will govern, nor the extent of his jurisdiction as to matters, persons, and mode of procedure; this requires, besides the episcopal consecration, a further intervention of the

ecclesiastical authority, that is, at present at least, of the Pope.

Hence, although the Roman Pontiff could not abrogate the episcopal office, he can choose those who will be raised to it, assign to them their flock, fix the limits of their authority, restrict it, and even, in particular cases, take it away from them. According to the more common opinion, Bishops receive their jurisdiction from God, but through the Pope; certainly they do not receive it without his intervention and should not exercise it independently of him.

II. APPOINTMENT OF BISHOPS. (Can. 329-334.)

118. We may take the appointment of Bishops to include three things: the choice or designation of the subject by election, nomination, or in any other way; the canonical provision or actual conferring of the office, the taking possession thereof or enthronement, which renders the appointment fully effective.

1. *Designation or Election of Candidates.* (Wernz, n. 730; Cavagnis, Institutiones Juris Publici, Lib. II, n. 117; Thomassin, P. II, L. II, c. 1-41; Bingham, Antiquities of the Christian Church, Book IV; Dictionary of Christian Antiquities, Bishop; Dictionnaire de Théologie Catholique, Election des Evêques; Dictionnaire d'Archéologie et de Liturgie, Elections Episcopales; Hefele-Leclercq, o. c., T. I, p. 544; II, p. 1350; Vacandard, Etudes de Critique et d'Histoire Religieuse, Les Elections Episcopales sous les Mérovingiens; Imbart de la Tour, Les Elections Episcopales dans l'Eglise de France du IXe au XIIe Siécle, Paris, 1890; E. Roland, Les Chanoines et les Elections Episcopales du XIe au XIVe Siécle, Aurillac, 1909; American Catholic Quarterly Review, January 1896, Episcopal Elections; The Irish Theological

Quarterly, April 1907, Irish Episcopal Elections in the Middle Ages.)

119. 1°. Ancient Discipline. (*a*) The Apostles themselves appointed their immediate successors, possibly after consulting the people, as they had done for the choice of the first deacons. After them begins to appear some form of election. St. Clement of Rome writes towards the year 97 that the Apostles, foreseeing the strifes to which the appointment of Bishops would give rise, decreed that the episcopal body in each church would choose them and the Christian community give their consent. (I. Cor. iv, 5.) According to St. Cyprian (Epist. 68), in Africa in the middle of the third century, a Bishop is elected in presence of the people, by the suffrage of the clergy and the judgment of the Ordinaries of the province who have gathered in the city in which the vacancy has occurred, *plebe praesente, suffragio universae fraternitatis, episcoporum judicio.* This he describes as a common and Apostolic tradition.

The Council of Ancyra (314, Can. 18) supposes the existence of a similar discipline in Asia Minor half a century later. The Council of Nicaea (325, Can. 4) does not mention the intervention of the people, without, however, excluding it; that of Laodicea (381) would seem to exclude it, and some historians have understood its twelfth Canon in that sense, but more probably it condemns only some abuses resulting from popular agitation or intrigue.

The ancient texts do not define with complete precision the relative share the people, clergy, and Bishops had in these elections, and perhaps there existed no very uniform rule on the subject; but generally they represent the community as expressing their preferences for certain candidates or testifying to their worthiness, consenting to or approving the

choice made; the clergy as making the election and the Bishops, chiefly the Metropolitan, as sanctioning it and giving the consecration. During this period the Popes only watch from afar over the observance of the law and repress abuses.

(*b*) In the sixth century the interventions of the civil power, which had remained comparatively rare under the first Christian emperors, became more frequent in the newly-formed kingdoms, particularly in Spain, Gaul, and afterwards Germany. The Council of Orleans (549, Can. 10, 11), sanctioning an already existing practice, granted to the Merovingian princes the right of ratification in the elections, but this did not satisfy them; often they take the election itself into their own hands, force their candidates, and not always worthy ones, on the rightful electors, send their representative to preside over the electoral assembly, which can not meet without their permission. (Vacandard, o. c.; Coun. of Toledo, 681, Can. 6; 693, Can. 2.)

Bishops and Councils protest against these abuses of power, but without avail, except perhaps at brief intervals under such rulers as Charlemagne and Louis the Pious. As a consequence, by the end of the eighth century, the people have ceased to take part in the elections, only a few of the *honorati* or *nobiles* represent the laity; the Bishops simply send a visitor to supervise the proceedings, the rural clergy rarely attend, and the election falls almost completely into the hands of the canons of the cathedral church.

In the ninth century, with the development of the feudal system, conditions grow worse still; instead of the king or emperor, each duke, baron, or other landlord now seeks to control the appointment of Bishops and even claims the right of giving the investiture with ring and crozier.

(*c*) After a long struggle the Popes of the eleventh century succeed finally in restoring the freedom of canonical elections; clergy and people may now exercise again their rights. This, however, does not last long. The cathedral clergy, taking advantage of their position, gradually exclude from the elections, which they prepare and conduct, first the laity, then the other clerics and the Bishops of the province themselves, although not without difficulty. By the end of the twelfth century they have established their electoral monopoly and the Lateran Council of 1215 officially sanctions it. (C. 42, X, I, 6.)

120. 2°. Modern Discipline. (*a*) Under decretal law the canons of the cathedral church elect the Bishop and the Metropolitan confirms him. But as early as the thirteenth century, the negligence of Chapters, dissensions among their members, unreasonable delays, and other causes frequently oblige the Holy See to intervene; moreover, the practice introduced about this time to reserve to the Pope the appointment to certain offices and benefices grows rapidly. Clement IV (*Licet Eccles.,* August 27, 1265), after affirming the right of the Pope to dispose of all ecclesiastical offices, reserves to himself the appointment to all dignities and churches which became vacant in the Roman court; John XXII renewed this provision in his Const. *Ex debito,* 1316, and widened its scope. Gregory XI reserved to himself for his lifetime all patriarchal, archiepiscopal and episcopal churches in whichever way they might become vacant; his successors confirmed this measure, which remained as the second rule of the Apostolic Chancery and constituted the common law for the Latin Church. (J. B. Riganti, Commentaria in Regulas, Constitutiones et Ordinationes Cancellariae Apostolicae, Romae 1744, T. I, Regula II, p. 203;

G. Mollat, Les Papes d'Avignon, Paris, 1912. L. iii, c. iii, p. 388.)

(*b*) Although maintaining since the fourteenth century their right of free nomination to all episcopal sees, the Popes have not always exercised it to its full extent; they have made concessions of different kinds and allowed exceptions to the common law: some Chapters retained the right of election; to the civil rulers in several countries the Holy See conceded by Concordat or special arrangement the privilege of nominating or presenting candidates for vacant diocese, *v. g.* in Austria, Bavaria, France, Spain, Portugal. In other countries, particularly in English-speaking countries under the jurisdiction of the Propaganda, the Roman Pontiffs granted to certain members of the clergy the right to suggest names or submit lists of persons considered as worthy of the episcopate.

In England the members of the cathedral chapter select three names which they send to the Metropolitan and to the Congregation. The Bishops of the province discuss the merits of these candidates and forward the list with their observations to Rome. Since 1874 they may add other names of their own choice. (Inst. Ap. 21, 1852; I Westminster Council, D. xii, IV West. D. viii.)

An Instruction of the Propaganda of October 17, 1829, established the same system in Ireland with this important difference, that here not only the Canons but all the parish priests free from censure and in actual possession of their parish take part in the vote, and if the Bishops do not find the candidates recommended by the clergy sufficiently qualified they do not make any further recommendations and the Pope provides for the vacant church as he deems best.

According to a decree of July 25, 1883, in Scotland the English method was followed in dioceses which had a Cathedral Chapter; in others the Archbishop of Glasgow and the Bishops of the province made the recommendations.

In Canada, by a decree of December 2, 1862, the Bishops alone were empowered to recommend the priests whom they thought worthy of the episcopal dignity.

In the United States the discipline has varied. A decree of the Propaganda of March 18, 1834, completed by subsequent ones in 1850, 1856, 1861, directed the Bishops to communicate to the Congregation every three years names of suitable candidates for the sees which might happen to become vacant. (II Plen. Balt., n. 101 sq.) The third Plenary Council of Baltimore (1884, n. 15 sq.) gave a share to the diocesan consultors and irremovable rectors in the designation of candidates for the episcopal office. When a diocese became vacant they were to meet and select by secret vote three persons whom they recommended for that see. The Bishops would then pass on that list, add names of their own choosing if they wished, and forward them all to Rome.

In Australia a similar method was introduced by the decrees of May 19, 1866, and May 1, 1887. (Catholic Encyclopedia, Bishop, ii; Taunton, The Law of the Church, London, 1906, p. 84-94.)

121. 3°. Present Law. The Code affirms again the right of the Pope freely to nominate and appoint Bishops, but it does not abolish existing privileges or withdraw former concessions, and there remain at present four principal ways of designating Bishops: free nomination by the Holy See, which is the common law, election by Chapters, presentation by civil rulers, recommendation by Bishops or priests.

(*a*) In a few dioceses of Austria and of Switzerland and in those of Prussia and of the Upper Rhine Province the Chapters have continued to enjoy the privilege of selecting the Bishop.

(*b*) In some countries the right of presentation recognized to the head of the State has ceased by the rupture of the Concordat which had granted it. It remains still in several, and recent conventions have conceded similar prerogatives to others. By the Concordat concluded between Pope Pius X and Peter I, King of Serbia, June 24, 1914, before definitely confirming the Ordinaries of Belgrade and of Scopia, the Holy See must notify the royal governernment to find out whether there are any facts or reasons of a political or civil nature militating against the appointment.

(*c*) Recent Decrees of the Consistorial Congregation have introduced the lists or recommendations method into new countries: Brazil (March 19, 1921; A. A. S., 1921, p. 222), Mexico (April 30, 1921; A. A. S., 1921, p. 379), Poland (August 20, 1921; A. A. S., 1921, p. 430). They have modified it in others where it existed already: United States (July 25, 1916; Eccl. Rev., January, 1917, p. 58; March, 1917, p. 226; American Catholic Quarterly Review, January, 1917, p. 165-174), Canada (March 19, 1919, A. A. S., 1919, p. 124), Scotland (Nov. 20, 1920, A. A. S., 1921, p. 13).

122. The Decree concerning the United States explains that the method followed since 1884, called *terna,* did not meet the present exigencies of the Church; it causes long delays and has other inconveniences mentioned elsewhere. This refers probably to a letter of the Propaganda to the Bishops of the United States in 1892, calling their attention to the strifes and intrigues of which the election of Bishops

had been the occasion (Eccl. Rev., 1892, p. 15, 63) or to another of March 10, 1910, urging the necessity of secrecy in these matters and enacting penalties against the offenders. For these and other reasons it seemed well, after consulting the members of the hierarchy and receiving a favorable reply, to establish a new and more appropriate rule in proposing to the Holy See candidates for the episcopal office. Consequently:

(i) Every two years, at the beginning of Lent, each Bishop shall indicate to the Metropolitan one or two priests whom he deems fit for the episcopal office, stating their name, age, origin, residence, and position. He may take them outside of his diocese or even province, but he must know them personally and thoroughly.

(ii) Before making his choice he must take the advice of the diocesan consultors and irremovable rectors, not in a body but individually. He may consult also other members of the secular or regular clergy, but he is not bound in any case to follow the advice given.

(iii) When the Metropolitan has received all these names, he adds his own and draws up a general list in alphabetical order, which he sends to all the suffragans, so that they may make opportune investigations. All this ought to be done prudently and cautiously, so as not to break the strict secrecy of the proceedings.

(iv) After Easter, on a day and at a place fixed by the Archbishop, the Bishops meet without any solemnity and avoiding drawing attention, for a serious but moderate discussion of the candidates proposed.

(v) The candidates should be of mature, but not far advanced age, prudent, learned, devoted to the

Holy See and above all distinguished for integrity of life and piety. Attention is to be paid also to the candidate's administrative ability, his family, temperament, and health.

(vi) After this discussion the Bishops vote on each candidate, following the alphabetical order. They need not take a vote on one whom they have unanimously pronounced disqualified. For the voting they use three balls, one white, one black, and another of a different color, meaning respectively approbation, rejection, or abstention. If several candidates receive an equal number of votes the Bishops may decide, by a new scrutiny, to which they would give the preference. For this they write the name of their choice on a slip of paper and place it in the urn.

(vii) A report of the proceedings is sent to the Holy See with whatever information may help in the selection of the best-fitted person; Bishops may do this also in a private letter to the Consistorial Congregation or to the Pope.

The recommendations by clergy or Bishops do not, as Congregations have repeatedly declared, constitute a canonical presentation or nomination giving a *jus ad rem;* and in any case, whether of election, nomination, or recommendation, the Sovereign Pontiff remains free to reject a candidate whom he would judge unworthy or unfit.

123. (*d*) In the Oriental Churches the ancient practice of elections by the Bishops of the Province still prevails generally:

Among the Armenians the Bishops of the Patriarchate elect the Patriarch who must receive confirmation from the Roman Pontiff before he may exercise his jurisdiction. For the appointment of Bishops, the Prelates of the Patriarchate choose in

Synod three candidates to be presented to the Pope who selects one of them.

The Patriarch of Syria is elected in the Synod of the Bishops of the nation and asks for Papal confirmation after his consecration. The Bishops are chosen in a national Synod out of a list of three candidates presented by the clergy and more representative laymen, Magnates, of the vacant diocese (Wernz, II, n. 753).

124. 2. *Canonical Provision.* (Can. 330-334.) 1°. Prerequisite Conditions. Before conferring the episcopal dignity on any candidate, whether elected, presented, or recommended, the Sovereign Pontiff must ascertain his fitness for the office. For this he institutes an investigation or *processus informativus,* in whatever form he chooses. The method generally followed is the one laid down in the Const. of Gregory XIV, *Onus Apostolicae Sedis,* with the modifications introduced by various decrees of the Consistorial Congregation for countries in which it has established the list system. On all who take part or assist in this investigation is imposed the duty of strictest secrecy or *Secretum S. Officii* under pain of severe penalties even of excommunication reserved to the Holy Father to the exclusion of the Major Poenitentiarius himself. (S. C. Consist., March 30, 1910; July 2, 1910; April 28, 1911; April 25, 1917.)

2°. Qualifications Required. The Code mentions the principal ones: (*a*) Legitimate birth; legitimation by subsequent marriage would not suffice in this case under the present law, nor a dispensation already obtained for the reception of Orders. Legitimate birth supposes parents united in lawful, not necessarily Christian, wedlock; (*b*) thirty years of age completed; (*c*) at least five full years in the priesthood; formerly it was six months in Sacred Orders;

(*d*) good morals, piety, zeal for souls, prudence, and all the other qualities needed for the proper administration of the diocese to be provided. This may refer to more or less advanced age, condition of health, physical strength, skill in languages and other endowments which the state of diocese, the nature of the country, the character of the people, or similar circumstances particularly call for; (*e*) eminent ecclesiastical learning shown in some way and ordinarily by possession of the Doctorate or Licenciate in Sacred Theology or in Canon Law, preferably the latter, won in some university recognized by the Holy See, for a Bishop without learning, says Barbosa, is like a ship without rudder, a clock without weights, a bird without wings (De Officio et Potestate Episcopi, P. II, i, n. 25). Members of Religious Orders may have instead of the title of Doctor one equivalent to it granted them by their Major Superiors, or satisfactory testimonials as to their intellectual equipment.

The Pope alone has authority to dispense for grave reasons from some of those qualifications, not the electors nor patrons even of the highest rank. He alone pronounces final judgment on the fitness of candidates.

125. 3°. Necessity of Canonical Provision. Election, recommendation, or presentation even by a monarch does not confer episcopal authority as old regalists contended. Canonical provision, or investiture, by which the candidate becomes the real Bishop of the Diocese, is still necessary. This under the present discipline, as for several centuries past, the Pope alone gives; he does so by expediting through the Apostolic Chancery to the candidate himself and his Metropolitan the Bulls of official and

formal appointment, after preconization or promulgation of his decision in Consistory.

4°. Profession of Faith and Oath of Allegiance. Before he receives final confirmation or investiture the candidate must make a Profession of Faith in the form approved by the Holy See, in presence of a Delegate of the Pope, personally and not by proxy. He must also take the oath, as given in the Roman Pontifical, of fidelity to the Sovereign Pontiff and to the duties of his new office.

Usually the Apostolic Letters which authorize a Bishop to perform the consecration ceremony delegate him at the same time to administer this oath, which is then taken in the hands of the consecrating Prelate after the reading of the Apostolic Letters at the beginning of the ceremony.

126. 5°. Consecration and Initial Residence. (*a*) Unless legitimately prevented the Bishop-elect must receive the episcopal consecration within the space of three months from receipt of the Apostolic Letters, under pain of losing the fruits of his benefice or even his office. (Can. 2398.) Ordinarily the Pope allows new Bishops to choose their own consecrators.

(*b*) Within four months, also from receipt of the Apostolic Letters, he must repair to his diocese unless a legitimate cause of absence exists.

6°. Taking Possession. By canonical provision residential Bishops even before consecration acquire ordinary and immediate jurisdiction in their diocese, but they can not exercise their power till they have taken possession. Before this latter date they must not interfere in any way in diocesan matters. If, however, before being elected or designated in any other way for the vacant diocese, a Bishop held the office of Vicar Capitular, Administrator, Official, or Œconomus, he may retain it after the designation.

He could not be appointed to it now and what he can not do personally here he can not do by proxy.

Taking possession, or inthronization, or corporal institution, requires that a residential Bishop present his Apostolic Letters, personally or through a procurator to the Cathedral Chapter, in the diocese itself, in presence of the diocesan Chancellor, who draws up a complete report of the proceedings. In the United States the Letters are presented to the diocesan Consultors, who inspect them or have them read in a meeting of that body.

III. POWER OF BISHOPS. (Can. 335-337.)

(Wernz, II, n. 754; Mons. Americo Bevilacqua, De Episcopi seu Ordinarii ex Novo Codice Canonico Juribus ac Obligationibus, Desclée, Roma, 1921.)

127. 1. *Power of Order.* Consecration empowers all Bishops to administer the sacraments of Confirmation and of Orders, and ecclesiastical law reserves to them the consecration of churches, altars, chalices, and generally all consecrations which require the use of Holy Oils; but the Code does not deal with such powers in this place.

2. *Power of Jurisdiction.* Canonical provision constitutes residential Bishops teachers and rulers of a certain portion of Christ's flock; it gives them ordinary jurisdiction, which they can exercise over every one of their subjects both immediately and through local pastors. Their jurisdiction extends to all ecclesiastical matters, whether spiritual or temporal, belonging to the Church, like ecclesiastical property. It includes legislative, judicial and coercive power. The Code sets forth in detail its object, limitations, and mode of exercise when dealing with each matter in particular, with Sacred Things in the third book, with Judicial Trials in the fourth book,

and with Penalties in the fifth book. Here it only lays down some general principles.

128. 1°. Legislative Power. Residential Bishops can enact for their diocese, in or outside the Synod, real laws of a permanent character, which continue in force after the death of their author, and also particular precepts affecting individual persons. In this, however, they must keep within the limits assigned by higher authority; they can not command what common law forbids or forbid what it positively permits, and they are not allowed any longer to establish marriage impediments, irregularities, new feasts, etc.

2°. Judiciary Power. In his diocese the Bishop is the ordinary judge of the first instance in all causes real or personal, spiritual or temporal, that belong to the ecclesiastical forum (Can. 1572), excepting those reserved to higher authority by positive ordinance (Can. 220).

3°. Coercive Power. It goes with legislative and judiciary power as a necessary condition for the enforcement of law or judicial sentences. Ordinaries may inflict various penalties, censures not excluded, on violators of divine or ecclesiastical law, general or particular, but they should, in the exercise of this power, use moderation and imitate the example of the supreme authority in the Church. (Can. 2241.) Thus the Congregation did not approve a decree enacted by German Bishops which punished with suspension *latae sententiae* hunting even in its moderate form, *venatio non clamorosa,* unless grave and special reasons justified this rigorous measure. (June 11, 1921; A. S. S., 1921, p. 498; Nouvelle Revue Théologique, Mars 1922, p. 154.)

Episcopal laws and decisions become effective by common law as soon as promulgated and the Bishops

themselves determine the mode of promulgation, publication in Synod, insertion in the official organ of the diocese, individual communication to the clergy, etc.

129. 4°. Executive Power. As guardians of ecclesiastical discipline in their territory, Bishops have the right and the duty to watch over the application of laws general or particular. They have no authority to dispense from general laws except when explicitly or implicitly the legislator himself or a particular Indult grants it to them (Can. 81), but they should, as far as depends on them, promote obedience to all Church enactments by exhortation, warning, rebuke, punishment, and any other way suggested by zeal and prudence. The Code enjoins special vigilance in regard to the following matters:

(*a*) The administration of the Sacraments, in which the prescriptions of the Roman Ritual should be strictly adhered to, except with dispensation from the Holy See.

(*b*) Divine worship and veneration of the saints, from which ought to be banished all forms of devotion which the Church does not approve, practices which savor of superstition or worldliness or are contrary to Rubrics and not in keeping with the spirit of the Liturgy.

(*c*) Sacred indulgences, of which none but certainly authentic ones should be published or approved.

(*d*) Fulfilment of pious legacies and strict compliance with the wishes of benefactors or the conditions of pious foundations.

(*e*) Preservation of faith and morals among both clergy and people, which supposes care to prevent the propagation of false or dangerous doctrines and to combat vice under all its forms.

(*f*) Teaching of Christian doctrine, particularly to the young and the ignorant, that they may not remain without sufficient knowledge of religion.

(*g*) Proper training of children and young people in schools thoroughly equipped and conducted on strictly Christian principles.

(*h*) Preaching of the word of God in accordance with the rules laid down in another part of the Code (Can. 1327 ff.) and in the Instructions of the Popes, particularly Pius X and Benedict XV.

130. 5°. Ceremonial Rights. (*a*) A Bishop may celebrate pontifical functions in his whole diocese, not excepting places which enjoy the privilege of exemption; to do so outside of his own territory he needs the local Ordinary's explicit or at least reasonably presumed consent and that of the Religious superior if he is to pontificate in an exempt church.

(*b*) By pontifical functions the Code means those which according to liturgical regulations require the use of the pontifical insignia, that is, the crosier and the miter (Caeremoniale Episcoporum, L. I, c. xvii) such as the administration of Confirmation and Holy Orders, the consecration of Chrism, solemn Pontifical Mass or Vespers, etc. The Congregation of Rites has declared also that a Bishop should obtain the permission of the Ordinary of the place to celebrate Vespers with the pontifical insignia, that is, with mitre, although he does not use the crosier. (Blat, p. 299.)

(*c*) When a Bishop allows another to celebrate pontifical functions in his diocese he may give him the use also of the throne and canopy.

IV. DUTIES OF BISHOPS. (Can. 338-346.)

The Code treats here of five different ones: Residence, Application of Mass for the people, Report to

the Holy See on the state of the diocese, visit *ad limina,* and Visitation of the diocese.

131. 1. *Residence.* (Can. 338.) (Ferraris, Residentia; Reiffenstuel, T. III, Tit, IV; Wernz, II, n. 480; Thomassin, P. II, L. III, c. 30 ff.; Hefele-Leclercq, T. I, p. 784, passim.)

1°. Nature. The residence which the Church demands of Bishops and clergy in general implies actual presence in the place of their office, that they may discharge the duties connected with it. This means a formal, real, personal presence as distinct from a merely material one without active service, a fictitious or legal one, which exists only by a fiction of law or a presence by proxy.

2°. Obligation. Divine law obliges pastors of souls to attend to their flock, and because normally this can not be done effectively without personal presence many theologians have concluded that the obligation of residence is one of divine right. (Bellarmine, In Epist. ad Nep., cont. ii.) Several of the Fathers at the Council of Trent wished to have this defined as a revealed truth and the majority seemed to favor this view; but others strongly opposed it and after long and heated debates they left the question unsettled. (Pallavicini, Histoire du Concile de Trente, 1844, L. xvi, c. 4; xvii, c. 1; xix, 7.) At least all must admit that the obligation has a clear foundation in the divine right. The Church has promulgated it anew, confirming it with her authority and determining its extent.

132. (*a*) Ancient Legislation. The Council of Nicaea (325, Can. 16) does not mention Bishops in its decree on the residence of deacons or priests, probably because this did not seem necessary, but at Sardica, in 343, Osius denounced the frequent visits, principally of African Prelates, to the imperial court

as detrimental to dioceses and to the good name of the clergy; the Council decided consequently that Bishops should not travel to the emperor's city except when called by him. (Can. 7.) Should they have to defend the cause of orphans, widows, or condemned criminals, let them send one of their deacons or subdeacons to act in their name. Another Canon (11, 12) forbids them to absent themselves from their churches for more than three weeks or even for three successive Sundays. Several later Synods renew this prohibition and add the penalty of deposition. (Trullo, 692, Can. 80; Frankfort, 794, Can. 41.)

The Council of Antioch (341, Can. 11) had asked Bishops, when they considered a visit to the imperial court truly necessary, to submit the case to their Metropolitan and other Bishops of the province and abide by their judgment. St. Gregory the Great urges them likewise to obtain the permission of the Metropolitan for any prolonged absence, and he writes to the Bishop of Arles that the Bishops of Gaul must apply to him for this permission.

The same Pontiff insisted on all occasions on the duty of residence; having heard that a certain Pigmenius, Bishop of Amalfi, spent much of his time wandering about, he sent orders to his Legate to see that the Prelate reformed or else to confine him to a monastery and wait for further instructions. (A, 596; c. 20, C. VII, q. 1.)

With the institution of Vicars-General *in spiritualibus* or in *pontificalibus,* the number of Bishops who felt free to abandon their diocese grew still larger, and the abuse increased when to the burden of the episcopal office they added, by becoming temporal princes, the cares of civil administration, political and even military duties. The cumulation of benefices so common in those days contributed to the

same result. Popes and Councils all through the Middle Ages protested against such disorders; they enacted severe penalties against offenders, loss of the fruits of the benefice, suspension, privation of office, but they did not succeed in effecting a permanent cure.

When the Council of Trent undertook its work of reformation, the Fathers saw in those abuses one of the chief causes of the evils from which the Church suffered, and in several sessions they endeavored to find a remedy. "The Holy Synod," they say, "wishing to apply itself to restore the ecclesiastical discipline which is exceedingly relaxed, has thought it fit to begin with those who preside over the greater churches. . . . Let them know that they can not fulfill their ministry if like hirelings they abandon the flocks committed to them." Therefore they renew the ancient canons against non-residents and decree the penalty of loss of the fruits of the benefice against Bishops who absent themselves from their church for more than six months without valid reason and in case of contumacy the Metropolitan must denounce the offender to the Pope, who may depose the non-resident Prelate. (Sess. VI, c. 1.) Returning to the same subject in the twenty-third session (c. 1, de Ref.), the Fathers remind Bishops again that having by divine precept to feed their flock they are bound to personal residence in their church and may not absent themselves save for grave causes, like Christian charity, urgent necessity, due obedience and the evident necessity of the Church or country, which causes should be approved in writing by the Roman Pontiff or the Metropolitan. This, however, does not apply to a brief absence of two or at most three months, continuous or interrupted, during the year. Offenders incur the guilt of mortal sin and

they acquire no right to any fruits of their benefice corresponding to the time of their absence. Subsequent Popes confirmed these decisions and even added further sanctions. (Benedict XIV, Const. *Ad Universa.*)

133. (*b*) *Present Law.* The Code affirms once more the strict duty of personal residence for Bishops, explicitly specifying that it binds those also who have a Coadjutor and might be tempted to leave to him the care of the diocese.

3°. Legitimate Causes of Absence. Like the Council of Trent, ancient Canons admitted that in certain cases Bishops had a just cause for absenting themselves from their dioceses; the Code reduces these causes to two or three categories:

(*a*) Certain duties, viz. the visit *ad limina,* attendance at Councils as ordained by law and special obligations resulting from a civil office attached to the see, not personal, as when in some countries the Bishops of certain dioceses or all the Archbishops belong by right of office to the national assembly and must attend its sessions.

(*b*) Annual vacation. Besides the time required for the foregoing duties, the Code, like the Tridentine Council, allows to Bishops every year two or three months for a vacation; when there is a just, the legislator does not say a grave, cause for it, they may take it without further formalities or permission. They may take the three months all at once or at different intervals, but must not join them to the time of the visit *ad limina* or of attendance at the Council nor to the four months granted on the occasion of the appointment to the see; nor should the vacation of one year be united to that of the next one by combining, for example, the last months of 1924 with the first of 1925, because the Church does not approve

of prolonged absences. The right to the vacation goes with the year, and if not used does not pass to the following one.

In all cases the Prelate must make proper provision that the diocese may not suffer from the absence of its pastor.

(*c*) The grave reasons enumerated by the Council of Trent (Sess. XXIII, c. 1), Christian charity, urgent necessity, obedience, evident utility of Church or state, remain as before, no doubt, sufficient motives for dispensation from the residence law by the proper authority, but of themselves they would not excuse from it. The Code does not mention this here because it is always understood that the Pope may dispense from an ecclesiastical law for causes which he deems valid and may interpret a divine law according to his best judgment.

134. 4°. Place of Residence. Some of the ancient Councils prescribe for Bishops residence in the episcopal city near their cathedral church and they blame some who preferred to live in the country on their own estates. (V Carthage, Can. 5.) The present law imposes, strictly speaking, only residence in the diocese, since it does not specify any place in particular. It provides, however, that during the time of Lent and Advent, on the feasts of Christmas, Easter, Pentecost, and Corpus Christi, Bishops ought not to be away from their cathedral unless compelled by grave and urgent necessity. This would not be, therefore, the proper time for the annual vacation or the visit *ad limina*. Many ancient Synods had the same or similar provisions.

5°. Sanction. (*a*) Any ecclesiastic who violates the law of residence forfeits his right to the fruits of his office or benefice, in proportion to the duration of the illegitimate absence. (Can. 2381.) This rule

applies, no doubt, to Bishops also, since it clearly did under the former legislation, and nothing points to a change of discipline in this matter under the present Code. (Trent, Sess. XXIII, c. i, de Ref.; Vermeersch, o. c., p. 150.)

(*b*) Should a Bishop prolong his illegitimate absence from the diocese, not merely from his cathedral church, beyond six months, continuous or interrupted, his Metropolitan should report him to the Holy See, that is, to the Consistorial Congregation. If the Metropolitan himself is the offender, this duty would devolve upon the senior suffragan Bishop who observes the law.

135. 2. *Application of the Mass for the People.* (Can. 339.) (Gasparri, De Sanctissima Eucharistia, 1897, I, n. 496; F. Capello, De Sacramentis, vol. i, n. 636, Torino, 1921; Blat, o. c., p. 305.)

1°. Origin of the Obligation. Canonists find the foundation for the obligation of Bishops to offer the Holy Sacrifice for their people in the words of the Epistle to the Hebrews (v. 1): "Every high priest is ordained for men, that he may offer up gifts and sacrifices for sin." (Gasparri, l. c., n. 496.) The Council of Trent speaks of this obligation as one of divine right. (Sess. XXIII, c. 1.) Neither the Sacred Writer nor the Council defines in what sense or how often Bishops are bound to say Mass for their people. Benedict XIV, in the Const. *Cum semper oblatas* of August 19, 1744, declares that all pastors of souls must every Sunday and feast day not only celebrate but apply the Holy Mass for their flock. He does not mention explicitly Bishops, but the rule applies even with greater reason to them, being placed in charge of souls by Christ Himself, than to simple parish priests, who receive their commission from the Church. Speaking of them a few

years later, Clement XIII (*A quo die,* September 16, 1758) states that they ought to say Mass for the people frequently; but again he does not say how frequently, and although theologians taught commonly that it should be at least as frequently as Pope Benedict demands of parish priests (St. Alphonsus, Theologia Moralis, vi, n. 326), the absence of any official enactment left room for differences of opinion and of practice. To remove all doubt and secure uniformity, some Bishops asked the Holy See for an authoritative norm. Leo XIII, therefore, after consulting the Congregation of Council, decrees that all Bishops and Abbots Nullius are bound to say and apply the Mass for their people every Sunday and feast day, whether of obligation at present or formerly of obligation and now suppressed; and this notwithstanding, smallness of income or any other excuse whatsoever. (In *suprema,* June 10, 1882; A. S. S., vol. xiv, p. 529.) The Code has embodied the decision of the Pope without modification.

136. 2°. Nature of the Obligation. It is grave, real, personal and temporal, or fixed to certain days. (*a*) This law binds *sub gravi* and does not admit of exceptions; the poverty of the diocese or of the Bishop might be a legitimate cause for the Holy See to grant at least a partial dispensation, but of itself it does not dispense, as explicitly stated in the law, nor does any other excuse or custom, not even one existing from time immemorial.

(*b*) As attached to the office itself, this obligation shares in its permanency and must always be fulfilled, if not by the incumbent himself, at least by a substitute, and if not at the regular time at some other time.

(*c*) The Bishop himself should discharge this duty personally if he can and several decisions of the Con-

gregation show that only a serious reason allows the use of a substitute.

(*d*) The Mass should be said on the appointed days if possible.

2. Extent. The obligation begins as soon as the Bishop has taken possession of his see and it binds every Sunday and feast day of obligation, even on those feast days that have been suppressed; this means, as declared explicitly by the Commission for the interpretation of the Code, the feast days listed in the Const. *Universa* of Urban VIII (September 13, 1642) as days of obligation, many of which have since been suppressed, not simply the feast days now of obligation by the present law but not observed in some countries. Clement XI had added the feast of the Immaculate Conception. (Dec. 6, 1708.)

On Christmas day, and when a feast of obligation falls on a Sunday, one Mass suffices to fulfill the law.

Complete transfer of a feast implies transfer also of the obligation of saying Mass for the people, otherwise this obligation remains attached to the regular day. To be complete, the transfer must affect the Office, the Mass of the feast, the obligation for the people to assist at the divine service and to abstain from servile works. This can not occur in suppressed feasts.

A Bishop who governs several dioceses fulfills his obligation by saying one Mass for all the people under his care.

137. 3. *Visit ad Limina.* (Can. 340-342.) (Lucidi, De Visitatione SS. Liminum, Romae, 1883; F. Cappello, De Visitatione SS. Liminum et Dioeceseon, Romae, 1912; Thomassin, o. c., P. II, L. III, c. 40-42.)

1°. Former Discipline. (*a*) The duty of the visit *ad Limina Apostolorum* for Bishops includes a

pilgrimage to the tombs of the Apostles SS. Peter and Paul, a visit to the Sovereign Pontiff as an act of respect and obedience, and a report to the Holy See on the state of the diocese.

(*b*) Bishops made it a practice from the beginning, when convenient, to visit Rome from time to time in memory of the two great Apostles and to confer with the supreme pastor of the Church.

St. Leo in the fifth century speaks of an ancient custom which obliged the Bishops of Sicily to attend with those of Italy the Synod held in Rome every year or even twice a year. St. Gregory the Great allows them, because of the distance, to attend only every five years.

Pope Zachary, in the Roman Council of 743, reminds Bishops who have received their consecration from the Pope of the Canons which demand that they visit the city of Rome every year if they do not live too far, otherwise as frequently as prescribed for them.

About the middle of the eleventh century it has become a duty for Metropolitans, by custom if not by written law, to go to Rome before they obtain the Pallium. Gregory VII strongly insists on this obligation with Lanfranc of Canterbury; Paschal II and Innocent III write in the same sense to the Archbishop of Poland and to the Patriarch of Antioch. (Thomassin, l. c., c. 42, n. 6.) From the letter of Paschal II we learn that on receiving the Pallium Metropolitans promised under oath to come to Rome every three years.

The foregoing prescriptions concerned only Bishops of Italy or those consecrated by the Pope or Metropolitans.

(*c*) In the decretal collection of Gregory IX (c. 4, II, 24) we find a form of oath which Bishops were

to take before consecration and by which they bound themselves to visit the Roman sanctuaries every year unless properly dispensed. This is apparently the oath originally taken by the Bishops who received the episcopal consecration at the hands of the Pope, but its insertion in the official collection of laws gave it a more general import, and it gradually became obligatory for all, particularly as the Popes reserved to themselves all episcopal consecrations.

(*d*) In 1585 Sixtus V (Const. *Romanus Pontifex,* Dec. 20) formally decreed that henceforth all Patriarchs, Primates, Archbishops, and Bishops should at their consecration or enthronement promise under oath personally to visit the tomb of the Apostles and give an account of the condition of their diocese at stated times; that is, those of Italy and adjacent territories every three years, those of Germany, France, Belgium, England, Ireland, and Scotland every four years, those of Asia every ten years.

Benedict XIII published in 1725 a form of report to the Holy See divided into nine chapters and covering practically the entire field of diocesan administration. (Lucidi, o. c., I, p. 42; Taunton, The Law of the Church, p. 400.) Benedict XIV (*Quod sancta,* Nov. 23, 1740) confirmed this whole legislation and completed it; subsequent Popes introduced some slight modifications, but it has remained substantially the same to our own day. Pius X, by Decree of the Consistorial Congregation of Dec. 31, 1909, made some further changes to adapt it to present conditions, particularly in regard to the times of the visits and the form of the report. It has passed into the Code without new alterations.

138. 2°. *Present Law.* (*a*) All residential Bishops are bound to present to the Sovereign Pontiff, every five years, a report on the state of the

diocese committed to their care, according to the form prescribed by the Holy See.

Since 1911 Bishops must present their report every five years, regardless of the country to which they belong and of its distance from Rome. The Consistorial Congregation published, Nov. 4, 1918, a new formula corresponding more completely to the order and prescriptions of the Code. It consists of twelve chapters, and after some general directions deals successively with: the administration of temporalities, inventories and archives, with faith and divine worship, the Ordinary, the diocesan Curia, the Seminary, the clergy in general, chapters, Vicars Forane, Religious, the faithful; it concludes with a summary appreciation of the state of the diocese by the Ordinary. The report, written in Latin, properly dated and signed by the Ordinary, is submitted to the Consistorial Congregation, or to the Propaganda by the Bishops under its jurisdiction.

The quinquennial periods are fixed by law and are common to all the Ordinaries of a given country. They begin with the first of January 1911. The Ordinaries of Italy, Corsica, Sardinia, Sicily, Malta, and other minor adjacent islands must make their report the first year of each period, in 1911, 1916, 1921, 1926, 1931, etc.; those of Spain, Portugal, France, Belgium, Holland, England, Scotland, Ireland and adjacent islands, during the second year, in 1912, 1917, 1922, 1927, 1932, etc.; those of Austria, Hungary, Germany and other countries of Europe with adjacent islands during the third year, in 1913, 1918, 1923, 1928, 1933, etc.; those of both Americas and adjacent islands during the fourth year, 1914, 1919, 1924, 1929, 1934, etc.; those of Africa, Asia, Australia and the islands in these parts

of the world, during the fifth year, 1915, 1920, 1925, 1930, 1935, etc.

Should the year on which a Bishop's report would be due coincide totally or in part with his second year in office he may abstain from making it for that period.

(*b*) Besides presenting his report on the appointed year each Bishop must come to Rome and visit the Roman Pontiff to give him an oral account of his administration or receive his instructions.

Bishops living outside of Europe need come to Rome only every second quiquennial period, that is, every ten years, but they must send their report at the regular date.

(*c*) On the same occasion Bishops must visit the two churches of St. Peter at the Vatican and St. Paul outside of the walls, pray at the tomb of the Apostles, and inscribe their name in a book kept for this purpose in the sacristies of these Basilicas.

This twofold visit the Bishop must pay either personally or through his Coadjutor if he has one. For a just cause the Holy See would permit him to use a procurator, who should be a priest qualified for such a mission and residing in the diocese. The Code does not allow a Bishop to depute for this an ecclesiastic living in Rome, as it does in the case of Vicars Apostolic, but it does not require any other qualifications than general fitness for the mission.

139. 4. *Canonical Visitation of the Diocese.* (Can. 343-346.) (De Nicolai, De Episcopo Visitatore, Romae, 1710; Melchers, De Canonica Dioecesium Visitatione, Coloniae, 1901; Thomassin, o. c. P. II, L. III, c. 77-80; Une Visite Pastorale dans l'ancien Archidiaconé de Carden, Revue des Questions Historiques, Julliet, 1912, p. 117; J. M. Alliot,

Visites Archidiaconales de Josas, Paris, A. Picard, 1902.)

1°. Ancient Discipline. (*a*) Origin. As soon as Christians commenced to multiply outside of the episcopal city, Bishops felt it their duty to extend to them their personal care in the measure in which circumstances permitted. Historians show St. Gregory Thaumaturgus in the third century, St. Peter of Alexandria and others visiting country places to confirm the faithful in the faith and evangelize the pagans. The Arians accuse St. Athanasius of various crimes supposedly committed on a visiting tour in the Mareotic region, but he can disprove all their charges by the testimony of fifteen priests, fifteen deacons, and a number of laymen, who accompany him. Sulpicius Severus describes St. Martin, in his zeal for the conversion of heathens still so numerous in country places, traveling through the remotest districts of his diocese, in all humility and simplicity, clad in such poor fashion that on one occasion his strange appearance frightened a team of horses he met on the road, for which soldiers who drove them abused and brutalized him, but the Lord punished them.

At the beginning of the sixth century the Council of Tarragona (516, Can. 8; c. 10, C. X, q. 1) formally enacted a law obliging Bishops to visit their diocese once a year according to ancient custom. From this time on we frequently meet the same or similar provisions in Provincial Councils and in Capitularies. Some Synods decree that Bishops who neglect a portion of their diocese lose it to the neighbor who looks after it. (Thomassin, 78, 6.)

140. (*b*) *Object.* Popes or Councils assign as chief purposes of the diocesan visitations: preaching the Gospel, combating heresy, correcting disorders,

administering justice and imposing penance on public sinners, inquiring into the financial condition of churches, their state of repair, the liturgical vestments and sacred vessels, the life of clergy and people.

A writer of the end of the ninth century and beginning of the tenth (Regino of Prum, d. 915) composed a treatise on ecclesiastical discipline for use in diocesan visitations, in which he gives first a list of questions indicating the more important points for the Bishop's consideration and then the canonical authorities for each one of them (Migne, Patrologia Latina, vol. 132, p. 186); ninety-five of these questions concern the clergy and eighty-nine the laity. Many churches in Germany, France, Italy, and Spain possessed copies of this formulary. Another one used in all the dioceses of England in the thirteenth century contained sixty-eight questions or Visitation Articles.

On arriving in a parish, where the Archdeacon had preceded him by two or three days to announce and prepare for his coming, the Bishop called a meeting of the clergy and people, to whom he explained the purpose of his visit. He then selected six or seven of the most honorable parishioners to act as synodal witnesses; they were sworn to give complete and truthful information on the condition of the parish both material and spiritual, the life of the clergy and laity, then the interrogation commenced in the order of the formulary. Episcopal Registers still extant show that these witnesses did not hesitate to denounce disorders or abuses of various kinds and to point out the failings of their clergy themselves when they had cause, and even at times without cause, as subsequent investigation would prove. In the diocese of Exeter, for example, at

Bishop Stapledon's visitation in 1301, the synodal witnesses of Culmstock testify that William the Vicar is a man of good life and honest conversation and well instructs his parishioners. In the visitation of the sick and baptizing of the children and in all things that belong to his office they know nothing to be found fault with in him, with the exception that he makes too little pause between the matins and Mass on festival days. At Colyton, Sir Robert the Vicar is a good man and preaches to his people so far as he knows but not sufficiently, as it seems to them. His predecessors were accustomed to call the friars to give instructions but he does not care for them. At Dawlash the Vicar has the reputation of being a good man, but he does not reside in person. His substitute conducts himself well and teaches them excellently in spiritual matters, but his chaplain does not deserve the same testimony. (E. L. Cutts, Parish Priests and Their People in the Middle Ages in England, London, 1898.)

141. (*c*) Procurations. The expenses for the diocesan visitation, called procurations, soon proved a source of serious difficulties. The Council of Braga (572, Can. 2) forbids Bishops on the occasion of the visit to demand more than 2 solidi (60 cents?), to exact one third of the offerings, or to ask of the clergy menial services.

At a meeting held at Toulouse under Charles the Bald, in 844, at the request of priests who complain that the episcopal visitation ruins their churches, the king has some provisional rules enacted till a general synod regulates the whole matter. Let the Bishop, it is said, accept from his priests one measure of wheat, one of barley, one of wine, and a young pig worth 6 denarii (18 cents?) or the two solidi fixed by the Council of Braga. The Bishop should not

visit every small church which can not bear the expense of the visitation, but select some central place to which the neighboring pastors will bring their people. He will stop with one of them and the others will offer him as their contribution, each one ten loaves of bread, half a measure of wine, a young pig worth four denarii, two chickens, ten eggs, and a measure of oats for the horses. Let him see that his men do not ill-treat the clerics nor damage the house or fence. Pastors have to bear the expense of only one visit a year. If the Bishop has to come more frequently and dwells in the priest's house, let him not become a burden to him by bringing too many servants, inviting neighbors to meals, etc. (Labbe & Cossart, Sacrosancta Concilia, vol. vii. p. 1785.)

Numerous Provincial Councils likewise recommend moderation to Bishops in this matter. (Lib. III Decret., Tit. 39, de Censibus.) The Lateran Council of 1179, after exhorting Prelates to imitate the apostolic spirit of poverty and denouncing some who show themselves so exacting in regard to procurations that some churches have been compelled to pawn sacred vestments in order to pay for them, decrees that in the diocesan visitations Archbishops must not have more than forty or fifty horses, Bishops twenty or thirty, Cardinals twenty-five, Archdeacons five or seven, Deans two. They should not take with them hounds and hawks as for a hunting excursion. (C. 6, X, III, 39.) The conditions of the times account for such a display tolerated by the Council; Bishops often held the position of temporal rulers of high rank, they needed protection and assistance for the administration of justice. All did not take advantage of the concessions made to them by the Council. St. Bernard proposed as an example to

the Prelates of his day, his friend St. Malachy, Archbishop of Armagh, who had no house of his own, spent the greater part of the year visiting his diocese, working with his hands for his living and traveling on foot. (Thomassin, l. c., c. 80, n. 6.)

142. 2°. Modern Legislation. At the time of the Council of Trent some Bishops had ceased to visit their diocese every year and many more rested entirely upon their Archdeacon for the fulfillment of this duty; the privileges of exemption from episcopal visitation obtained by Religious chiefly since the twelfth century had in the course of time opened the door to various abuses; procurations still gave rise occasionally to controversies and appeals hindered the exercise of episcopal jurisdiction. The Synod renewed the ancient legislation on these points, completed or in a few cases modified it.

(*a*) Bishops, it says, shall not fail to visit their respective dioceses, either personally, or, if lawfully hindered, by their Vicar General or Visitor; if on account of its extent they can not visit the whole diocese every year they shall at least visit the greater part thereof so as to complete the visitation in two years.

The main object of the visitation is to lead to sound and orthodox doctrine, by banishing heresy; to maintain good morals and correct disorders, to animate the people by exhortations and admonitions, to religion, peacefulness, and innocence of life.

In order the more effectively to attain this end every visitor is admonished to treat all persons with fatherly and Christian love, to be content with a modest train of servants and horses, to complete the visitation as speedily as possible, although with proper care, without becoming troublesome to any one by useless expenses, not asking for any visitation

fees, nor accepting presents of whatsoever kind or in whatsoever way offered, any custom, even though immemorial, to the contrary notwithstanding. They have a right to the necessary food during the time of the visitation and no longer. In those places, however, in which the custom exists that visitors receive neither food, nor money, nor anything else but do all gratuitously, the same shall be retained there. (Sess. XXIV, de Ref. c, iii.)

Bishops shall visit secular churches in territories *nullius* (l. c., c. ix); also benefices with care of souls, whether attached to cathedral, collegiate, or other churches, or to monasteries and pious places of whatever sort (Sess. VII, c. vii); and in like manner all churches in whatsoever manner exempted (c. viii) and monasteries or houses, whether of men or of women, that have spiritual care of secular persons.

That they may the more effectively keep the people whom they rule in duty and obedience, in all that regards visitation and correction of manners, Bishops have the right and power, even as delegates of the Apostolic See, of ordaining, regulating, correcting and executing in accordance with the enactments of Canons what they deem necessary for the good of their dioceses, nor shall any exemption, inhibition, or appeal, even though interposed to the Holy See, suspend the execution of what they have enjoined or decreed. (Sess. XXIV, c. ix.)

(*b*) This legislation of the Council of Trent had remained substantially in force till the publication of the Code; Roman Congregations and particular Synods had only added more detailed regulations as to certain points, in order to facilitate its application or adapt it to special local conditions. (III Plen.

Balt. 1884, n. 14; Synodus Maynutana, 1900, n. 227-252.)

143. 3°. Present Law. (*a*) Purpose of the Visitation. The Code defines it in the words of the Council of Trent, as being to preserve sound and orthodox doctrine, maintain good morals, correct disorders, foster peace, innocence of life, piety and discipline among clergy and people, and to take whatever measures circumstances may suggest to promote the interests of religion. Some ancient Councils added the administration of Confirmation, and in practice convenience connects it frequently with the visitation, but it does not form a necessary part of it either by the Tridentine or present law.

(*b*) Obligation. Some Bishops had requested the Vatican Council to extend the time for the visitation to three or five years in larger dioceses. The present legislator gives satisfaction to the demand in as far as necessity, requires, but in his desire to maintain the old rule of the annual or bi-annual visitation wherever conditions permit, he prescribes that Bishops devote every year some time to it (a Council of Toledo said three months, 1565, Can. 2), and that they complete it in one, two, or three years, if possible, and in any case do not take for it more than five. The Third Plenary Council of Baltimore grants only three years. (1884, n. 14.)

The duty of visiting the diocese is a personal one, and a Bishop must discharge it himself, unless prevented from doing so by some legitimate cause recognized as such by law. In those cases he deputes his Vicar-General or any other worthy ecclesiastic he chooses to act in his name.

Several Particular Synods require that the Bishop take with him as co-visitors two ecclesiastics or at least one, skilled in ecclesiastical affairs, to help him

in ascertaining the real condition of parishes. (III Plen. Balt., n. 14; Maynooth, 1900, n. 227.) The former common law permitted or even encouraged this but did not impose it; and likewise the present law allows but does not command Bishops to have two ecclesiastics as companions and assistants in the visitation. They may choose these among the members of the cathedral or of a Collegiate Chapter or take any other ecclesiastic they wish. Some Chapters formerly enjoyed the right of visitation, to the exclusion of, or together with, the Ordinary. The Council of Trent affirmed the absolute independence of Bishops in this matter and abrogated all privileges to the contrary. (Sess. XXIV, c. 3.) The Code reproves again any custom or privilege that would limit the freedom of Bishops in the selection of their co-visitors.

Should a Bishop fail to visit his diocese, the Metropolitan might, under certain conditions, as said before (Can. 274, 4, 5), supply his negligence.

144. (*c*) Object. Visitation implies investigation of conditions material or moral; it bears on:

(i) Persons, the clergy and in particular canons, parish priests, members of the diocesan curia, Religious having care of souls in what concerns their office even though they may be exempt otherwise, Religious Communities of women, lay confraternities, and in general all the faithful of the diocese in matters pertaining to faith, morals, the reception of the Sacraments and ecclesiastical administration;

(ii) Things, the sacred vessels and vestments, baptismal font, tabernacle, furniture of sacristy and church, Mass foundations, confessionals, relics, statues, images, pious legacies;

(iii) Places called pious because dedicated to religion or charity, like churches, oratories, ceme-

teries, seminaries, headquarters or meeting places of pious associations, hospitals under ecclesiastical control, etc.

All such persons, places or things located in the diocese are subject to the Ordinary's visitation, even though they might otherwise enjoy exemption, unless they can prove that their exemption extends also to episcopal visitation by concession of the Holy See.

As to exempt Religious Communities of men the Bishop can exercise his right of visitation only in cases expressed by law, as is more fully explained when treating of Religious. (Can. 512; 615; 618; 632; 1261, 2; 1382.)

145. (*d*) Manner of Proceeding. (Can. 345.) (i) For the ceremonial part of the visitation, the Roman Pontifical, like many others for several centuries, contains an "Order of visiting parishes," which particular Synods usually recommend to follow; the Baltimore Council of 1884 refers to the Baltimore Ceremonial.

(ii) For the visitation proper or investigation a long experience has shown the utility of regular forms, consisting of a set of questions or Visitation Articles, carefully drawn up with a view to special local conditions, and sent beforehand to the parties concerned, in order to obtain more accurate, complete, and prompt information.

(iii) In the correction of abuses, negligences, or defects pertaining to the purpose and object of the visitation as defined above, the Bishop or his delegate proceeds in a paternal manner, that is, not as a judge but rather as a father, without the formalities of a regular trial, in a summary way, not inflicting grave and vindictive punishments, but relatively light penances.

From such informal precepts or decrees of the

Bishop in the course of the visitation the law does not admit appeals *in suspensivo* which would deprive them, at least temporarily, of their efficacy, but allows only recourse *in devolutivo;* they must be obeyed till the competent superior decides otherwise.

Should the Bishop, in the visitation, meet with cases which call for the strict application of penal law or for some severe sanction, as if he had to remove a pastor at once, pronounce excommunication, etc., he would be obliged to observe the usual formalities or judicial procedure.

146. (*d*) Procurations. Under the commonly prevailing conditions, the question of the material cost or compensation for the episcopal visitation does not present the same difficulties as formerly; the Code renews only some of the ancient and more general provisions on the subject.

It exhorts Bishops to proceed speedily, without unnecessary delays, yet not carelessly and with undue haste; not to cause superfluous expenses and become a burden to any one. Neither they nor those who accompany them ought to ask for or accept any presents of any kind, even though spontaneously offered, on the occasion of the visitation, all customs to the contrary being reproved.

As to what concerns food and lodging for themselves and their companions, or procurations and traveling expenses, let them follow legitimate local customs.

V. RIGHT OF PRECEDENCE. (Can. 347.)

147. 1. In his diocese a Bishop, by reason of his power of jurisdiction, has precedence over all other Prelates, Bishops, or Archbishops, with the exception of his Metropolitan, a Delegate of the Apostolic See in his territory, or a Cardinal, whether the latter

have the episcopal character or not. As a mark of respect he may give the use of his throne to a visiting Bishop. (Cong. Rit., November 26, 1919.)

2. Outside of his diocese a Bishop's rank is determined in accordance with the rule formulated in Can. 106, by the dignity of the person he may represent, his seniority in the episcopate, his age; taking into account likewise the principle laid down in Can. 280, that a Patriarch precedes a Primate, a Primate an Archbishop, and an Archbishop, Bishops.

VI. TITULAR BISHOPS. (Can. 348.)

(Wernz, II, n. 808; Thomassin, P. I., c. 27, 28; Leo XIII, In Suprema, Jun. 10, 1882.)

148. 1. *Origin.* In the ancient Church, Bishops expelled from their sees by infidels, particularly at the time of the Mohammedan invasions, would retain the title of their diocese, although they often had neither people nor church. At their death, successors were appointed who could not hope even to see their diocese. This practice became the source of many abuses, and the Popes at first disapproved of it. Clement V, at the Council of Vienna (1312; l, Clem. III, 5), explicitly forbade the creation of any new Titular Bishops without the authorization of the Holy See. (Thomassin, l. c., c. 27.) The Popes have continued to the present day to fill those ancient episcopal sees fallen into the hands of infidels; thus they preserve the memory of a sometimes glorious past, and they can confer the episcopal dignity without its burdens upon ecclesiastics whom they wish to honor or use in various capacities, as Vicars Apostolic, Auxiliaries or Coadjutors, Delegates or members of the Roman Congregations and Offices.

Pope Leo XIII changed the name of Bishop *in partibus infidelium,* often given them for that of Titular Bishop, consecrated also by ancient custom, partly through regard for Greek Schismatics, who have some of those sees in their possession. The sees occupied or destroyed by the heretics of the sixteenth century have not been preserved as titular bishoprics.

149. 2. *Power of Order.* Titular Bishops are Bishops in the full sense of the term, united to their church by the same bond as residential ones, possessing the same power of Order. Their appointment, transfer, and deposition belong exclusively to the Roman Pontiff.

3. *Power of Jurisdiction.* Titular Bishops do not exercise any jurisdiction in their dioceses and do not even take possession of them. Hence the law of residence does not bind them, nor are they obliged in justice to offer the Mass for their diocese, although charity should prompt them, as the Code recommends, to do so from time to time. They have the other duties attached to the episcopal dignity.

4. *Honors and Privileges.* They are likewise entitled to the privileges of Bishops and to the honors due to them except those which presuppose, or flow from, the possession of ecclesiastical jurisdiction. The privileges which they enjoy in common with residential Bishops will be enumerated in the next Canon.

VII. RIGHTS AND PRIVILEGES OF BISHOPS.

(Can. 349.)

150. The Code has increased considerably the rights and privileges of Bishops, extending to all of them many which so far had been granted only to a

few. It does not enumerate them all here, but only some, which it has no occasion to mention elsewhere when treating of their respective object. Some of those rights belong to all Bishops, others only to residential Bishops.

1. *Rights Common to All.* From the moment they receive official notification of their canonical provision, Bishops, both residential and titular, enjoy the following rights and privileges:

(*a*) To choose as confessor for themselves and for the members of their household, including the servants, any priest they wish who, if he does not already possess jurisdiction, receives it by the very fact and can absolve them from all sins and censures not reserved to the Holy See in a most special manner or incurred by violation of the Secret of the Holy Office. From these powers are not excepted sins or censures reserved to the Bishop of the place in which the confession is made.

(*b*) To preach everywhere with the at least presumed consent of the Ordinary of the place;

(*c*) To celebrate or authorize another to celebrate in their presence one Mass on Maundy Thursday and three Masses on Christmas night, provided they have not to celebrate in their cathedral. This does not imply that they may celebrate one Mass and have another celebrated in their presence; the sentence must be understood disjunctively. (Blat, p. 189.)

(*d*) To bless, in the form prescribed by the Ritual, and attach the indulgences usually granted by the Holy See, to rosaries or chaplets of various kinds, medals, scapulars approved by the Holy See as to object, form, matter and color, and to impose the latter without inscription on the register; to erect Stations of the Cross in churches, oratories, public or private, and other pious places, *v. g.* hospitals,

and attach to them the ordinary indulgences; to bless crucifixes, attaching to them the indulgences of the Way of the Cross for the faithful who because of sickness or any other legitimate impediment can not make the Stations in the regular manner.

For all these blessings and for the erection of Stations they must use the rites prescribed by the Church and they may not delegate these powers to priests, as the *Poenitentiaria* declared. (July 18, 1919.)

(*e*) To celebrate on a portable altar, not only in their home but wherever they may be, in the house of a friend, on a journey, etc.; and to have another Mass besides their own celebrated on the same conditions in their presence.

(*f*) To celebrate on board a vessel, all necessary precautions being taken to avoid danger or irreverence; the sea must be sufficiently calm and the place decent. A sacred minister might hold the chalice in case of rolling of the ship or any agitation.

(*g*) To follow their own calendar in any church or oratory and enjoy every day the favor of the privileged altar.

(*h*) To gain in their private chapel the indulgences which require a visit to a certain church or public shrine in the place in which the Bishops are.

(*i*) To impart the episcopal blessing.

(*j*) To wear the episcopal insignia as defined by liturgical rule, the pectoral cross everywhere (Cons. Cong., May 2, 1910), the purple skull cap. (Cong. R., November 26, 1919.)

151. 2. *Privileges Special to Residential Bishops.* From the moment they have taken possession of their See, residential Bishops enjoy the privilege and right: (*a*) To receive the fruits of the Bishopric or that portion of the diocesan revenues which, by

particular law or custom, go to the support of the Bishop, such as salary, procurations, cathedraticum (Can. 1504.)

(*b*) To grant an indulgence of fifty days in their own territory, which includes also exempt places (Can. 927); an Archbishop can grant indulgences of one hundred days (Can. 274); to impart the papal blessing on Easter Sunday and on some other great festival of the year at their choice but within their territory.

(*c*) To erect their throne with canopy in any church of their diocese, not excluding exempt ones.

(*d*) Liturgical law gives them the right also to have their name mentioned in the Canon at every Mass celebrated in their diocese even by Religious; and on the anniversary of their election to have the commemoration of it made likewise at every Mass. This anniversary is that of their appointment in Consistory if they were thus elected or transferred; or that of the expedition to them of the Apostolic Letters of appointment if they were elected or transferred before publication in Consistory. (Cong. of Rites, June 8, July 8, 1910.)

VIII. LOSS OF THE EPISCOPAL OFFICE

The episcopal, like other ecclesiastical offices, may cease by death, transfer, resignation, deposition, as explained in Title IV, Chapter II, of this book. The Code treats also of the vacancy of episcopal sees in Title VIII, Chapter VII, Can. 429 ff.

Chapter II

Coadjutor and Auxiliary Bishops

(Can. 350-355.)

(Wernz, II, n. 809; Thomassin, l. c., P. II, L. II, c. 55-59; Blat, o. c., p. 320.)

152. In a diocese, among those who share in the episcopal authority, the Coadjutor or Auxiliary Bishop occupies the first place when the Ordinary's age or infirmities or numerous occupations call for an assistant.

1. *Origin of the Office.* The historian Eusebius tells us that in 212, Narcissus, Bishop of Jerusalem, then 116 years old, took Alexander of Capadocia to help him in the discharge of his episcopal duties. (E. H., l. vii, c. xi.) In the fourth century, the Bishop of Nazianzen received a similar service from his son, St. Gregory the Theologian, as also Eusebius of Caesarea from St. Basil. The Bishop of Hippo, Valerius, consecrated St. Augustine to have him as co-laborer in life and successor after death.

The Council of Nicaea (325, Can. 8) forbade the appointment of two Bishops for the same Church, and the Council of Antioch (341, Can. 23) decreed that no Bishop should appoint his successor without the consent and cooperation of the Bishops of the province; subsequent Councils renewed these provisions, endeavoring to maintain the freedom of episcopal elections and the rights of electors against the encroachments of Prelates who attempted to force their candidate upon them. Still the Church ad-

mitted the principle that instead of obliging an old and infirm Bishop to resign his office when he could no longer fulfill its duties, consideration for his services should rather suggest *to give* him the necessary assistance and let him retain his title. At times also, to prevent long vacancies and their inconveniences, prudence commanded the appointment of a successor before the death of the incumbent. Thus Pope Zachary allowed St. Boniface of Mayence, not, it is true, without reluctance, to choose his own successor (c. 17, C. vii, q. 1), and Innocent III authorized the Bishop of Arles to give a Coadjutor to the Bishop of Orange. (C. 5, X, III, 6.)

These appointments of Coadjutors with or even without right of succession having proved an occasion of abuses, Boniface VIII, not wishing to condemn them altogether decided to reserve them all to the Holy See. (III, 5, *in Sexto.*)

In the decree of Reformation the Council of Trent, desiring to abolish anything which looked like hereditary transmission of ecclesiastical offices and benefices, abrogated all customs or concessions permitting the appointment of Coadjutors with right of succession, but it made an exception for Abbeys and Bishoprics when necessity or great utility demanded it, of which the Roman Pontiff remained the sole judge. (Sess. XXV, c. vii.)

The Code confirms again the existing discipline and explicitly reserves to the Holy See the appointment of all Coadjutors, permanent or temporary, with or without right of succession. This applied, under the former legislation and, no doubt, still applies also to countries where the privilege of election or presentation exists. (Wernz, n. 810.)

153. 2. *Kinds.* A Coadjutor properly so called is usually given to the person of the Bishop, because,

v. g. of his age, infirmities, or other reasons, and with right of succession. Sometimes, although more rarely at present, he is given to the see because of its importance or special needs, whoever may be the incumbent.

Coadjutors are also given to the Bishops personally without right of succession; to these, formerly known as Vicars *in Pontificalibus,* Suffragans, the Code reserves the special name of Auxiliaries.

3. *Rights.* (Can. 351-352.) 1°. Rights of Coadjutors and Auxiliaries given to the person. Usually the Apostolic Letters of appointment define them and should be first consulted as constituting the primary rule in the matter.

Unless the Letters provide otherwise: (*a*) A Coadjutor or Auxiliary appointed to assist a Bishop altogether incapacitated, for example, by mental or bodily infirmity, has all the rights and duties of a residential Bishop.

(*b*) The one who assists a Prelate still able to take an active part in the administration of the diocese has power to do that which his Ordinary commits to him. The legislator, however, directs the Bishop not to commit to others, at least habitually, what his Coadjutor or Auxiliary can and is willing to do. On the other hand a Coadjutor or Auxiliary should, unless prevented by some legitimate impediment, consent, when requested by the Bishop, to perform pontifical or other functions which form part of the episcopal office, *v. g.* administer Confirmation or Holy Orders, celebrate solemn High Mass at the cathedral, etc.

2°. Rights of Coadjutors Given to the See. They may, within their territory, without further authorization perform all functions pertaining to the epis-

copal power of Order except confer Ordinations, for which they need in all cases a special permission.

In other matters the Apostolic Letters or the will of the Bishop determine their powers, which therefore they possess by delegation.

As Titular Bishops they enjoy, besides, all the privileges which go with that dignity.

154. 4. *Obligations.* 1°. All Coadjutors and Auxiliaries, before entering on their functions, must formally take possession of their office. This they do first by presenting their Letters of appointment to the Bishop, and this regularly suffices for Auxiliaries.

Coadjutors with right of succession and those given to the see have to present their Letters also to the Chapter or diocesan Consultors as prescribed for Bishops.

Should the Bishop be in such state that he can not perform a human act, both Auxiliaries and Coadjutors would have to present their Letters only to the Chapter or diocesan Consultors.

2°. Residence. Coadjutors and Auxiliaries are bound by the law of residence in the same manner as Bishops; like them and on the same conditions they may take a yearly vacation of two or three months. With the permission of their Bishop they might absent themselves for a little while longer.

5. *Loss of Office.* 1°. A Coadjutor with right of succession becomes Ordinary of the diocese whose Bishop he assisted as soon as the vacancy occurs, and that by virtue of his appointment as Coadjutor, without any further formalities, provided he had already taken possession of his office in the manner prescribed.

2°. An Auxiliary loses his office when his Bishop's

comes to an end for whatever cause, death, resignation, transfer, deposition, unless the Apostolic Letters had exceptionally provided otherwise.

3°. A Coadjutor given to a see retains his office during the vacancy and afterwards under the successor, apparently with the same powers.

Chapter III

Diocesan Synods

(Can. 356-362.)

(Benedict XIV, De Synodo Dioecesana; Thomassin, l. c., P. II, L. III, c. 73-76; Bouix, De Episcopo, T. II, p. 347 ff; Wernz, II, n. 858; Blat, l. c., p. 324; Cocchi, l. c., n. 275.)

155. As the Pope exercises his power with special solemnity in general Councils, so Bishops exercise theirs more solemnly in the assembly of their clergy, who, however, have not, like the members of General or even Particular Councils, any teaching or legislative authority, but only assist their Ordinary with their counsel and partake of his power simply as his cooperators in this sense.

1. *Nature of Synods.* Canonists and implicitly the Code also define a diocesan Synod as an assembly of the clergy of a diocese convoked by the Bishop to deliberate with him on matters pertaining to the welfare of the diocese.

Ancient writers used freely the terms Synod and Council one for the other, but at present the name of Council is reserved to assemblies of Bishops and Synod, although applied still sometimes to Councils proper, ordinarily designates meetings of the lower clergy.

156. 2. *Origin.* The first Bishops lived close to their clergy and consulted them on all important matters but in an informal manner. As centres of worship multiplied, the priests and deacons of the episcopal city and church became the ordinary ad-

visers of the Bishop, but when the clergy of other churches had grown more numerous and more important, particularly in country places, they, too, were consulted at least on questions of greater moment. The beginnings of diocesan Synods must go back to the first period of Church organization and they may have even preceded Provincial Councils, although we do not meet with any undoubtedly authentic mention of them till the fourth century. (Thomassin, l. c., c. 73, 1; 75, 1.) In 321 the Patriarch of Alexandria calls a meeting of the clergy of his city and of the Mareotic region to depose Arius, excommunicated shortly before by a Council of one hundred Bishops. At the beginning of the fifth century, John, Bishop of Jerusalem, holds a Synod against the Pelagians. (415.) In the West the first Council of Orleans (511, Can. 19) commands Abbots to assemble once a year in the place designated by the Bishop. Ancient historians refer also to several Synods held at Llandaff in the province of Wales under Bishop Oudoceus around the year 560, to excommunicate princes guilty of murder and other crimes. (Spellman, Concilia Orbis Britannici, vol. i, 62; Hefele-Leclercq, l. c., T. III, p. 174.)

The first Synod of which we possess a complete account and the authentic Acts is that of Auxerre in 585; seven Abbots, thirty-four priests and three deacons took part in it and subscribed its decrees, which they had enacted, they declare, by common consent, *communi consensu et Convenientia.* (Sacrosancta Concilia, Labbe & Cossart, vol. v, p. 956.) It refers to the Synod of the middle of May as to a well known and already ancient institution. Provincial Councils of this period legislate on the frequency of Synods and their object: they ought to be held at least once a year, in some places twice, to promul-

gate the decisions of Councils and receive from pastors an account of their administration. (Huesca, 598, Can. 1; Toledo, 633, Can. 26.)

During the Middle Ages the rule remains the same, but Atto, Bishop of Verceil (960), attributes to its frequent violation most of the evils which grieve the Church. In order to add to its efficacy the fourth Lateran Council (1215, Can. 6) gave it the support of its authority and force of common law, threatening with suspension Prelates who would fail to comply with it. The Council of Trent renewed the Lateran decree, and after completing the legislation on Synods it extended their powers to increase their importance (Sess. XXIV, 2, 18, de Ref.; xxv, 2, 10). As a result Synods became more frequent for a time, but by the middle of the seventeenth century negligence had crept in again. Another revival of the discipline in the middle of the nineteenth century proved likewise of short duration. The first Provincial Council of Westminster in 1852 still orders Bishops to hold a diocesan Synod every year, if possible (xxix, 5), but the second Plenary Council of Baltimore, in 1866, whilst recognizing the great utility of Synods, does not consider it possible to have them so frequently; it explicitly commands only to hold one for the promulgation of its decrees (n. 63). Similar difficulties were experienced in other countries and some Bishops asked for at least a partial dispensation from the law or considered themselves dispensed by prevailing conditions. Practically, in many places, the tacit consent of the legislator and custom had come to justify this view in our days.

157. 3. *Time and Place.* 1°. The present law imposes upon Bishops the obligation of holding a diocesan Synod at least once every ten years. The

Fathers of the Vatican Council asked for one every three years, but this has not seemed necessary at present; Bishops have now, in pastoral retreats, ecclesiastical conferences, and other clerical gatherings frequent opportunities to meet their priests, give them their instructions, correct possible abuses, promote study and piety among them; Synods have become less needed than in the past.

A Bishop who rules over several dioceses, either as the proper Bishop of them all because they have been united with equal rights or as the Bishop of one and the perpetual administrator of the others, fulfills the law by holding one Synod to which he calls the clergy of the whole territory under his jurisdiction. The decisions of this Synod have force of law in all those dioceses.

Some particular Statutes had a fixed date for the Synod; those of Bourges had chosen the Tuesday and Wednesday of the second week after Easter; so also those of Rodez under Bishop Raymond. At Clermont it was the Wednesday and Thursday after Pentecost. The Code leaves this to the discretion of the Ordinary in each diocese.

2°. The regular place for holding a Synod has always been and remains the episcopal city and the cathedral church, at least for the solemn sessions. For the preparatory meetings and deliberations an ordinary hall may be found more convenient. Even the solemn and formal sessions may be held in some other church than the cathedral when there is a reasonable cause for it.

158. 4. *Convocation and Presidency.* The Bishop of the diocese convokes the Synod and presides over it. This power belongs to him as soon as he has received his Letters of appointment and taken canonical possession of his diocese, even though he may

not yet be consecrated or invested, in the case of an Archbishop, with the Pallium.

The Vicar-General does not have authority to convoke a Synod without special mandate. Under the former legislation the Vicar Capitular might hold a Synod when a year had elapsed since the last one because the law called for one every year. Since this provision exists no longer, neither does the right of the Vicar Capitular, as explicitly declared by the Code.

Nothing indicates that the Bishop needs the consent or the advice of the Chapter for the convocation of a Synod.

159. 5. *Members.* (*a*) Former Discipline. The sixteenth Council of Toledo (693, Can. 7) orders Bishops to publish its decrees in a meeting of the Abbots, priests deacons, clerics, and people of the diocese. Other Synods mention likewise the presence of inferior clerics and laymen; the Council of Salingestad (1022) speaks of some chosen deacons and a few pious lay persons. Under the Carolingian princes the local count attended Synods in order to enforce their decrees. Frequently the lay members retired after the opening ceremonies and did not remain for the deliberations. In modern times they do not appear at all. Benedict XIV asks himself whether a Bishop might admit laymen to the Synod and although the Congregation of Council had once answered this question in the negative, in view of the ancient practice, he expresses the opinion that the Bishop might admit them, but only as a favor, not as the recognition of any right, for grave reasons, and without any permission to vote. (1, c., L. III, c. 9.)

It would seem that in the early Middle Ages all

the clergy of the diocese, at least all priests, took part in Synods. A Council of Cologne, however, speaks only of Abbots, Archdeacons, and rural Deans (1536.) The Council of Trent imposes the obligation of attending diocesan Synods on all who have charge of secular churches, but it does not, nor did subsequent legislation, clearly determine who may and who must receive a call.

160. (*b*) Present Law. The Code contains more specific directions; it enumerates in detail those who have a right to a place in the Synod together with the obligation of obeying the summons when issued to them, and those whom the Bishop may invite to attend if he deems it opportune.

1°. The following have the right and duty to attend:

(*a*) The Vicar-General.

(*b*) The Canons of the Cathedral Chapter or the diocesan Consultors, all of them and not simply their representatives as formerly held (Benedict XIV, l, c. Lib. III, c. 4.)

(*c*) The Rector of the diocesan Seminary, at least of the major or theological as distinct from the preparatory, Seminary.

(*d*) All the Vicars Forane or Deans.

(*e*) One representative from each collegiate church; the members of the collegiate Chapter elect one of their number, in the usual way, to represent them.

(*f*) All the pastors, secular or regular, exempt or not, of the city in which the Synod is held, whether it be the episcopal city or another.

(*g*) At least one pastor from each deanery; he is chosen in a regular election by all priests who have actual charge of souls in the deanery. This

includes all pastors whether irremovable or not, and also the *Vicarii Paroeciales,* excepting the *Vicarii Cooperatores* or ordinary assistants. (Can. 471-476.) The pastor thus deputed to attend the Synod must secure a substitute to replace him in his absence. The text of the law implies that the Bishop may invite the deaneries to send each several representatives, but he is not obliged to do so.

(*h*) Abbots having real jurisdiction as distinct from merely titular ones, and one of the superiors of each clerical order or congregation, residing in the diocese and designated by the Provincial, unless the provincial house be in the diocese and the Provincial himself chooses to represent his community at the Synod.

The present law affects Abbots and Religious Superiors even though they have no parochial duties or are subject to a general chapter, for it does not make any distinction.

161. 2°. The Bishop may also, without very grave reason but simply if he judges it opportune, call to the Synod:

(*a*) All Canons, that is, those also of collegiate churches.

(*b*) All the pastors of the diocese, secular or regular.

(*c*) All religious superiors, understanding superiors of clerical Orders or Congregations who have their residence in the diocese.

(*d*) Each secular priest of the diocese; this does not include, and consequently excludes, priests belonging to an Order and who do not come under one of the previous rules; also clerics who have not yet received the priesthood, even though they might possess a simple benefice; *a fortiori,* laymen. A

sufficient number of priests must, however, be left in the parishes to attend to the needs of the faithful.

All these, if invited to the Synod, will enjoy the same right to vote as the members of the first category, unless stated otherwise by the Bishop in the invitation.

The legislator does not explicitly affirm for them as for the others the obligation of coming when called, but since he recognizes the right of the Bishop to call them there must exist for them the corresponding duty to obey the summons if it has the form of command and not of mere permission.

3°. Should any of those who ought to assist at the Synod be legitimately prevented from doing so, they may not send a procurator in their place, but must notify the Bishop and let him know the cause of their absence.

The Bishop has power to employ the penalties which he considers appropriate to compel attendance at the Synod and punish the negligent. This applies also in the case of non-exempt Religious and even of exempt superiors or Abbots who are pastors. The case of exempt Religious who are not pastors might be referred to the authorities in the Order.

162. 6. *Object.* 1°. Formerly, after publishing the decrees of the previous Provincial Council, the Bishop, in Synod, asked of all the pastors a detailed account of their administration; in some places they had to bring with them their sacred vessels and vestments to show the care they took of them, and some of their ecclesiastical students as evidence of their zeal for the training of clerics. A *Scrutinium* or thorough investigation of the spiritual condition of clergy and people completed these reports. The form drawn up by Burchard of Worms to guide the *Scrutatores* contains as many as eighty questions.

Often also Synods served as courts of justice to which clerics and laymen referred their controversies for speedier settlement.

2°. Modern Synods limit their activity almost exclusively to the enactment of diocesan statutes. In this their sphere of action extends as far as the jurisdiction of the Bishop, from whom they receive all their authority, not beyond. The Code states that they must deal only with matters that pertain to the particular need or welfare of the diocese.

They should not, as Benedict XIV warns them, pronounce on doctrinal matters, attempt to decide theological or canonical controversies, enact statutes contrary to the common law or to the decrees of Plenary or Provincial Councils. They may adopt measures for the correction of local abuses and the promotion of virtue, particularly obedience to the general law, apply the prescriptions of the Code to particular conditions, define what remains indefinite, etc.

163. 7. *Mode of Procedure.* The Caeremoniale Episcoporum (L. I, c. xxxi) and the Pontificale Romanum regulate what pertains to the liturgical and ceremonial side of the Synod. The Code treats only of its legislative activity.

1°. The Bishop may, if he thinks it expedient, some time before the opening of the Synod, appoint one or several committees of ecclesiastics of the diocese to prepare the matter for it. He may have the matter prepared in some other way, but the legislator suggests this method, without imposing it, because it will ordinarily prove the most convenient and most effective one.

2°. Before the opening of the sessions the Bishop must communicate to all the members of the Synod,

the text of the proposed decrees that they may have time to study them carefully.

3°. Preparatory sessions are held under the presidency of the Bishop or his delegate for the discussion of all matters which the Synod is to decide upon. Every member present has the privilege of expressing his views, presenting his objections, suggesting changes, etc.

The expression of views by the assembly may, no doubt, take the form of a vote, but the law does not mention it nor, therefore, prescribe it here.

164. 8. *Authority in the Synod.* The Synod of Pistoia claimed for parish priests an equal right with the Bishop to pronounce on matters of faith and to legislate on the reformation of ecclesiastical discipline. Pius VI, in the Const. *Autorem Fidei,* Aug. 28, 1794, condemned those doctrines as rash, false, subversive of Church organization, and favoring heresy.

The Bishop is sole legislator in the Synod; for the appointment in Synod of synodal judges and examiners and parish priest consultors he needs the consent of the assembly (Can. 385, 1574), but in all legislative matters he exercises independent authority. The other members of the Synod have only a consultive vote, even the Canons of the Cathedral Chapter, who in the present law receive no special mention here and no special prerogative above the rest of the clergy.

The consultive vote may be taken in the preparatory sessions or, as frequently practised in the past, at the solemn session before promulgation. The law has no definite prescription on this point; it only asserts the merely consultive character of whatever vote is taken and demands a free discussion of all the questions before enacting decrees.

The Bishop alone subscribes the Synodal Constitutions. He may, without further formality, promulgate them at once, in the closing session, according to custom, or on some other occasion, and they go into effect immediately unless he provides differently.

Chapter IV

The Diocesan Court

(Can. 363-390.)

PRELIMINARY PROVISIONS

(Can. 363-365.)

165. 1. *Composition.* In the general administration of his diocese a Bishop needs the assistance of various officials. These form his court which, in diocesan organization, corresponds to the Roman Curia in the organization of the universal Church.

The episcopal Curia, in a diocese of some importance and fully organized, includes a Vicar-General, an Official, a Chancellor, a Promotor of Justice, a Defender of the Bond of Marriage and Sacred Orders, synodal Judges and Examiners, parish priest Consultors, Auditors, Notaries, Cursores or Couriers, and Apparitors or Beadles.

2. *Appointment.* The appointment of these officials should be made in writing, in accordance with the prescription of Can. 159; this, however, does not seem required for the validity of the act.

3. *General Duties.* (*a*) After their appointment these officials must take the oath of office and promise faithfully to discharge their functions, without regard to persons, not allowing themselves to be influenced by any consideration which does not affect the merits of the case. The ancient law explicitly demanded this oath only of synodal Examiners and parish priest Consultors.

(*b*) They must attend to the affairs committed to

them under the direction of the Bishop and in the manner laid down by law.

(*c*) They are bound to secrecy in matters pertaining to their office or functions, the gravity and extent of this obligation to be determined by law or by the Bishop. Thus the Decree *Maxima Cura*, imposes on Examiners and Consultors the grave obligation, under oath, of observing strict secrecy in all that they come to know in the exercise of their office. (Can. 7.)

The Code treats of the Promoter of Justice, Official, Defender of the Bond, synodal Judges, Auditors, Couriers, and Beadles in the fourth book, Can. 1573-1593. The present chapter deals only with the Vicar-General, Chancellor, Notaries, synodal Examiners, and Consultors.

ARTICLE I

THE VICAR-GENERAL

(Can. 366-371.)

(Ferraris, Prompta Bibliotheca, s., v.; Wernz, II, n. 800; Thomassin, P. I, L. 11, c. 7, 8; Blat, 1, c., p. 335; Vermeersch-Creusen, Epitome Juris Canonici, I, n. 343; American Quarterly Review, 1895, p. 313; E. Fournier, Les Origines du Vicaire-Général, Paris, Picard, 1922.)

166. 1. *Origin of the Office.* The early Bishops were assisted in the discharge of the duties of their office by all their clerics who lived around them, particularly by the priests in spiritual matters and by the deacons in functions pertaining more to the external order.

Gradually one of the priests, the first by seniority or appointment, assumed special importance and became known, at least as early as the fourth century, as the Archpriest or Protopriest. He exercised a

sort of supervision over the rest of the clergy, superintended divine worship in the episcopal church, attended the Bishop in the liturgical ceremonies, and supplied him in the celebration of the divine services, preaching, and the administration of penance or the other Sacraments. (J. Faure, L'Archiprêtre, des Origines au Droit Décrétalien, Grenoble, 1911.)

More important still was becoming at the same time the position of the first deacon, the *Diaconus episcopi* or Archdeacon. St. Jerome describes him as never leaving the Bishop's side, and St. Leo as transacting the greater part of the business of the diocese. He had the administration of Church property, distributed the alms, trained the candidates for Orders and presented them to the Bishop. In the West his power went on increasing, particularly from the eighth to the twelfth century. By this time he had acquired a quasi-episcopal jurisdiction; besides ample administrative, he possessed independend judicial, authority, visiting the parishes and conducting courts of the first instance for the punishment of ecclesiastics, even of priests. Whilst in the beginning he acted as a delegate of the Bishop, now he considered his power as ordinary, and the Chapter or even temporal rulers at times intervened in his appointment.

This led to abuses and frequent conflicts with pastors, with cathedral clergy and principally with the Bishop. As a remedy, Councils and Bishops proceeded gradually to curtail the powers and privileges of the Archdeacons. When the Council of Trent had taken away from them jurisdiction in matrimonial causes and in the criminal causes of clerics (Sess. XXIV, c. 20; XXV, c. 3), there remained to them little more than a merely honorary dignity.

Meanwhile Bishops had come to depend more and more for assistance in the general administration of the diocese upon an official called procurator or vicar, appointed freely by them, revocable at will, more closely united with them, and their immediate representative.

The practice had existed from the beginning for Prelates, when they absented themselves from their dioceses or could not administer them because of age or infirmity, to appoint a procurator or substitute. When, in 451, Demetrius, Patriarch of Constantinople, went to the Council of Chalcedon, he left his diocese in charge of his Archpriest Dioscorus. St. Gregory the Theologian governed for a time the church of Nazianzen in the name of his aged father. (Thomassin, P. I, L. II, c. 7; Fournier, l. c., p. 79.)

In the twelfth and thirteenth centuries mention of these substitutes occurs more and more frequently; perhaps the development of the system of benefices rendered their services more necessary. The Decretals refer to them as Procurators or Vicars. (9, X, I, 38.) After Gregory XI the title of Vicar prevails.

In the fourteenth century, owing possibly to frequent and habitual absences of Bishops or to the need of more complete organization of dioceses, the office of Vicar-General tends to become permanent and to continue with the Bishop present. The Archbishop of Rouen appointing a Vicar-General explicitly stipulates that he will exercise his functions in the presence as well as in the absence of the Bishop. Earlier documents, without saying so explicitly, imply that the Vicar-General received an absolute and permanent appointment. (Salamanca, 1335, I.) The great canonists of this period, John Andrea and Frederick of Sienna suppose this to be the usual practice. (Fournier, l. c., p. 101.)

167. 2. *Nature of the Office.* Under the present law a Vicar-General may be defined as a priest legitimately appointed to exercise in the diocese ordinary and universal jurisdiction in the name of the Bishop.

In the beginning he acted rather as a delegate, but that his jurisdiction had become ordinary there remained little doubt before and there can remain none after the explicit declaration of the Code. He exercises his authority in place of the Bishop, it is true, and therefore his jurisdiction is vicarious, but still ordinary. (Can. 197.)

It must be universal as to territory, and a Bishop could not divide his diocese between two Vicars-General; also as to persons and matters, at least morally speaking. The Bishop should not put on it such restrictions that it ceases to be universal or general. Regularly, however, it does not extend to criminal matters, which common law reserves to the Official.

Formerly many canonists identified the Vicar-General with the Official; originally they differed (Fournier, o. c.) and in some countries, France, Belgium, England, Germany the old practice had been maintained of distinguishing them and entrusting voluntary jurisdiction to the Vicar-General and contentious or criminal jurisdiction to the Official. (Wernz, n. 802.) The Code has adopted and sanctioned this discipline. (Can. 1573.) In small dioceses the Vicar-General may fill also the office of judge or Official.

When the temporal administration of a diocese requires much time and attention it is committed in some places to an Œconomus; regularly it lies within the province of the Vicar-General.

168. 3. *Appointment of the Vicar-General.* (Can. 366.) (*a*) Every residential Bishop has the

right to appoint a Vicar-General as soon as he has taken possession of his diocese, even thought he is not yet consecrated. The same privilege belongs to Abbots and Prelates Nullius (Can. 198) but not, by common law, to Vicars or Prefects Apostolic. Benedict XV authorized them, however, to have Vicars Delegates with all the faculties of Vicars-General. (A. A. S., 1920, p. 120.)

(*b*) There is an obligation to appoint a Vicar-General only when the proper administration of the diocese demands it. Should a Bishop neglect this duty, the Holy See, but not the Metropolitan, might correct him or make the appointment directly, in which latter case the Bishop could not revoke the Vicar at will.

(*c*) The Bishop appoints the Vicar-General freely and independently of any intervention of the Chapter or of any other physical or moral person except in case of some special contract or other legal provision. He can revoke him at will, that is, for any reasonable cause known to himself and which he is not bound to reveal except to the superior to whom the revoked Vicar would have appealed, as he can do, *in devolutivo*. A revocation pronounced without any serious, relatively grave reason, would be valid but unlawful.

(*d*) The ancient law never spoke but of one Vicar-General, however, the custom had prevailed in various countries to appoint several. The Code explicitly permits this in two cases: when the diversity of rites or the importance of the diocese render it necessary, a necessity of which the Bishop remains the judge and which he should probably not interpret in a very strict sense. The contrary custom it not reproved and may therefore be retained on the usual conditions. (Can. 5.) Should the Vicar-General be absent or prevented from discharging his duties the Bishop

may appoint a substitute to act in his place with the same powers.

169. 4. *Qualifications for the Office.* (Can. 367.) Under the present law, which modifies on a few points the previous written legislation if not the common practice, the Vicar-General must have the following qualifications.

(*a*) He must be a priest, not simply a cleric; at least thirty years old; a doctor or licentiate in theology and canon law, or at least well versed in both these sciences, commendable for his sound doctrine, the probity of his life, his prudence and practical experience.

(*b*) He must belong to the diocesan or secular clergy, not to any Religious Order or Congregation; the present law is more definite and absolute than the ancient one on this point. To dispense from it the permission of the Religious superior would no longer suffice; it excludes from the office even legitimately secularized Religious. (Can. 642, 3°.) If, however, an Order or Congregation has full charge of a diocese, as may happen particularly in missionary countries, one of its members might fill the office of Vicar-General. This is the only exception made by the legislator to the general rule. The mere appointment of a Religious to a Bishopric does not place the diocese under the care of his Order.

(*c*) The office of Vicar-General should not be committed to the Canon Penitentiary, who deals with the questions of the internal forum; nor to blood relations of the Bishop, particularly those in the first degree or the second mixed with the first, a brother, uncle, or nephew; nor, except in cases of necessity, to a parish priest or to any one who has charge of souls. The duties of Vicar-General, particularly in a large diocese, would interfere with

those of the care of souls; to avoid this the legislator wishes to keep pastors free from the burden of diocesan administration; only necessity justifies departure from this rule.

(*d*) Several particular decrees of Synods or even of Roman Congregations had forbidden in the past to choose as Vicar-General a native of the diocese, lest perhaps he should not possess sufficient independence. The contrary practice had prevailed in several countries with the implicit approval of the Holy See; the present law explicitly declares it legitimate.

170. 5. *Powers of the Vicar-General.* (Can. 368.) 1. By virtue of his office the Vicar-General enjoys, throughout the whole diocese, both in spiritual and temporal matters, the ordinary powers belonging regularly to the Bishop by common law or custom, except those which the Bishop may have reserved to himself or which require a special mandate from him.

(*a*) These are powers attached to the office, ordinary, therefore, and capable of delegation. They extend to the whole diocese and could not be limited to one portion of it, by dividing, for example, the territory between two Vicars.

(*b*) Neither does law permit to entrust temporal matters exclusively to one Vicar-General and the spiritual ones to another, but it supposes that the Vicar-General has only the voluntary, and the Official, the contentious, jurisdiction. (Can. 1573.)

(*c* These powers are restricted in two ways: by special action of the Bishop and by the provisions of the common law.

(i) The Bishop may reserve to himself certain matters which would otherwise come under the jurisdiction of the Vicar-General, but he should not so

multiply these reservations as to change the character of the Vicar's Office. He should, moreover, explicitly state which cases he reserves to himself. Ancient canonists applied here the rule: a general concession does not contain what the superior would likely not have granted in particular; but the reason for this application exists no longer now that the law specifies in detail the matters which remain reserved to the Bishop except for a declaration to the contrary on his part. We must not, then, presume any further reservations unless they be expressed.

(ii) Under the present Code, the Vicar-General needs a special mandate: to incardinate or excardinate clerics (Can. 113), to appoint honorary Canons (Can. 406, 1), to appoint to ecclesiastical offices (Can. 152), to convoke the diocesan Synod (Can. 357, 1), to appoint pastors and parochial vicars (Can. 455), to remove assistant pastors (Can. 477, 1), to erect pious associations (Can. 686, 4), to reserve sins (Can. 893, 1), to grant dimissorial letters (Can. 958, 959), to permit marriages of conscience (Can. 1104), to consecrate sacred places (Can. 1155, 1), to grant permission for the building of a church (Can. 1162, 1), to authenticate relics (Can. 1283, 2), to fix the compensation which may be demanded for the celebration of Mass (Can. 1303, 3), to erect benefices (Can. 1414, 3), to unite them (Can. 1423, 1), to appoint to them (Can. 1432, 2), to grant the canonical institution (Can. 1466, 2), to permit an exchange of benefices (Can. 1487, 1), to inflict ecclesiastical penalties (Can. 2220, 2), to absolve apostates, heretics, and schismatics from excommunication. (Can. 2314, 2.)

The Bishop may give this special mandate for particular cases or by general concession as if in the appointment of his Vicar-General he would grant

him all faculties even those which require a special mandate; neither would he need to explain his intention by means of examples as demanded by ancient canonists, for under the present law that general statement bears a sufficiently definite sense. (Wernz, p. 631; Vermeersch, n. 346.) Good canonists consider as ordinary the powers obtained by this special mandate principally when it is contained in the letter of appointment or in a general formula. (Maroto, Institutiones, n. 699, 9; Vermeersch, 1. c., n. 347; Blat, 1. c., p. 340.)

2. The Vicar-General shares also in powers which the Bishop possesses by delegation:

(*a*) Except for a special provision to the contrary, he can execute the Apostolic Rescripts directed to the present Bishop or his predecessor and former ruler of the diocese, Administrator, or Vicar Capitular.

(*b*) He enjoys likewise the faculties granted habitually to the Ordinary of the place by the Holy See. The Code defines as habitual the faculties granted in a permanent manner or for a fixed period of time or for a certain number of cases. (Can. 66.)

All these powers, as received from the Holy See, can be subdelegated.

171. 6. *Dependence on the Bishop.* (*a*) In order to secure unity of action in the government of the diocese and safeguard episcopal authority, the law demands that the Vicar-General refer the more important affairs to the Bishop for advice or decision; that he keep him informed of what has been or may be done in the interest of discipline among clergy and people.

(*b*) The Vicar-General must avoid carefully using his power against the judgment or will of his Bishop, whom he has mission to assist and cooperate with.

He should remember that he could not validly grant a request refused by the Bishop. (Can. 44.)

7. *Honorary Privileges.* (*a*) Even in presence of the Bishop, the Vicar-General, both at private and public functions, takes precedence over all the ecclesiastics of the diocese, the dignitaries and canons of the Cathedral Chapter included, even in choir and capitular meetings, whether he belongs to the Chapter or not, whether he assists in his insignia or without them, contrary customs notwithstanding. (Cong. Conc., 19 Maii, 1919; A. A. S. XI, p. 349; Monitore, Ott. 1919, p. 296, Marzo, 1920, p. 80; N. R. T., Jan., 1920.) The Code makes one exception only to this rule; it concedes precedence to a Bishop over a Vicar-General who has not the episcopal character. These provisions do not apply to liturgical ceremonies.

(*b*) If the Vicar-General has received the episcopal consecration he enjoys the privileges of Titular Bishops; if he has not, he is entitled during his term of office to the privileges and insignia of the Titular Prothonotaries Apostolic, as laid down in the Motu Proprio *Inter Multiplices* of Feb. 21, 1905. (Eccles. Rev., vol. XXXII, p. 612; vol. XXXIII, p. 73). They may wear a black cassock with two pendants on the left, a rochet, a mantelleta, all black. On more solemn occasions they may wear over their ordinary dress a silken sash with fringe and a hat with a band and tassels, all likewise of black color.

8. *Cessation of Office.* (Can. 371.) The jurisdiction of the Vicar-General expires (*a*) by resignation legally presented and duly accepted as prescribed (Can. 183-191); (*b*) by removal, which takes effect when he receives official notification from the Bishop; (*c*) by the vacancy of the see. As the Bishop and his Vicar-General form one tribunal, as soon as the

power of the former ceases, by death, transfer, resignation, or otherwise, that of the latter ceases also. The same principle applies in case of suspension of jurisdiction which may result from excommunication, personal interdict, or *suspensio ab officio,* not simply a *divinis.*

ARTICLE II

THE CHANCELLOR AND OTHER NOTARIES; THE EPISCOPAL ARCHIVES

(Can. 372-384.)

172. *The Chancellor.* The title of chancellor has been given in both civil and ecclesiastical administration to officials who differed much in rank and attributions. In diocesan organization at present it serves to designate that member of the episcopal court whose chief, if not only, duty is to take care of official documents, to file them in the archives, dispose them in chronological order, and index them properly.

Every Bishop, and the same rule applies undoubtedly to Abbots or Prelates Nullius, must appoint a Chancellor in his court. The Church has always insisted on the necessity of preserving records of all official acts and important events. For this purpose the early Popes had their notaries, *scriniarii* or *tabularii.* Anastasius the Librarian tells us that Julius I ordered the registers belonging to each church to be collected for safe custody by the notaries and all deeds entrusted to the first of them, the Primicerius.

The Chancellor must be a priest possessing in the judgment of his Ordinary all the qualifications which the nature of his functions calls for. If necessary he may be given an assistant who will have the title

of vice-chancellor or vice-recorder and, therefore, full canonical standing.

By his very office the Chancellor is also a notary, with all the privileges and duties this implies.

173. 2. *Notaries.* 1°. Appointment and Qualifications. (*a*) Besides the Chancellor, the Bishop may appoint also other Notaries; the law does not oblige him to do so, as it may not be necessary particularly in small dioceses. An instrument validly drawn up or signed by a duly appointed notary constitutes legal proof and demands credence in all courts.

(*b*) Notaries may be appointed for all acts, or for judicial acts, or only for certain particular cases or matters.

(*c*) If clerics are not available, the Bishop may appoint laymen to the office of Notary, but in criminal cases of clerics the Notary must always be a priest.

(*d*) Like the Chancellor, the Notaries must be men of good reputation and above all suspicion. Paul IV declares null and of no authority instruments drawn up by Notaries who had defended or favored heretics. (Const. *Cum ex Apostolatus,* Feb. 15, 1559, 5.)

(*e*) All these Officials, the Chancellor and Notaries, may be removed or suspended by the superior who appointed them, that is, ordinarily the Bishop, by his successor, and by his superior in such matters; to remove them, however, the Vicar Capitular would need the consent of the Chapter or of the Diocesan Consultors. The Vicar-General possesses this power without special mandate since we find no mention of it here.

They are removed or suspended validly without any reason and lawfully for any reasonable cause,

without appeal to higher authority, at least not *in suspensivo*.

2°. Functions. The office of the Notaries is: (*a*) To write the episcopal acts or instruments regarding enactments by the Ordinary, such as foundations for Masses, appointments to offices; or obligations assumed by various contracts, accepted legacies, etc.; or judicial summons and intimations, decrees and sentences pronounced in court; or whatever else requires their intervention.

(*b*) To keep in writing an exact record of the acts of the episcopal administration, indicating for each one the place, the day, month, and year, and duly signing the document.

(*c*) To show to those who have a right to see them and under the conditions laid down by law, the acts and documents kept in the registers and to authenticate copies made of them.

Notaries have no authority outside of the diocese of the Bishop who appointed them nor in other matters than those assigned to them.

The Code enacts severe penalties against Notaries who abuse their position or neglect their duty. (Can. 2406.)

174. 3. *Diocesan Archives.* (Can. 375-384.) In the Const. *Maxima Vigilantia* (June 14, 1727), from which the Code has taken most of its provisions on this subject, Benedict XIII refers to the zeal of the Roman Pontiffs and other Prelates for the preservation of ecclesiastical documents, and shows the advantages of care as well as the inconveniences of neglect in this matter. A collection of texts bearing on the history and work of the Church existed at Jerusalem as early as the year 212, as attested by Eusebius. (E. H., L. vi, c. 11.) From the writings of Tertullian we see that already in his

day the Church of Carthage possessed in its Scrinium the lists of its Bishops and clergy, registers or census books, catalogues, inventories, church calendars, martyrologies, etc. Historians trace the papal archives back to Pope Fabian (236-250) or to his predecessor Anterus, if not to Clement I himself. St. Damasus (366-384) erected a new edifice for them beside the Basilica of St. Lawrence and St. Jerome tells us that any one could consult there the letters of the Popes. (Dictionnaire d'Archeologie, Bibliothéque, Chancellerie.)

175. 1°. General Episcopal Archives. (Can. 375-378.) (*a*) Organization. Bishops must provide a place, both safe and convenient, where to keep legal documents and various writings pertaining to the affairs of the diocese, whether spiritual or temporal, properly arranged and classified, and carefully protected.

An exact and strictly accurate inventory or catalogue of the documents contained in the archives should be made, with a brief summary of them.

Every year, within the first two months of the year, should be added to the inventory or catalogue all the documents recently gathered, whether they be of recent origin or had been overlooked before, so that the list be kept up to date.

Should any papers or documents go astray or be misled, the Ordinaries must make a careful search for them and use all necessary means to have them restored to the archives. The matter is considered as sufficiently important to entrust it to the Ordinary himself and not leave it entirely in the hands of the Chancellor or other official.

(*b*) Custody. The archives must be locked and no one allowed to enter it except with the permission of the Bishop or Vicar-General and the Chancellor.

Permission by the Bishop or Vicar-General does not suffice without that of the Chancellor.

The Chancellor alone has the key to the archives. The present law speaks of one key only; the Const. *Maxima diligentia* required two, kept by different persons.

No one may take any documents from the archives without authorization from the Bishop or Vicar-General; the Chancellor's consent does not suffice.

Documents thus taken out of the archives must be returned after three days; the Ordinary, however, not the Chancellor, may extend the permission, but the law warns him not to do this too freely, which some understand to mean that he should not add more than two or three extra days.

Whoever takes a document out of the archives must leave a signed receipt with the Chancellor.

176. 2°. Secret Archives. (Can. 379-382.) (*a*) Organization. Besides the general archives, all Bishops must have secret ones, or at least have in the general ones a special safe or chest carefully closed and locked and immovable. Therein are kept the papers which must remain secret, such as those concerning marriages of conscience, dispensations or absolutions in the internal forum not sacramental, etc. The law recommends great caution with regard to the documents of this kind, that they may not be lost or become public. Some of them, however, it commands to preserve only for a certain time and then to burn them, so that nothing may remain of them; they are those pertaining to criminal cases against morality when the defendant is dead or ten years have elapsed since the pronouncing of the condemnatory sentence. The rule would not apply if no condemnation had been pronounced. Every year these documents ought to be destroyed as soon as the

time comes for this, preserving only a brief summary of the case and the text of the final sentence; the rest has ceased to have any importance and might prove a danger to the reputation of the parties concerned, without necessity.

For the secret as for the general archives a list and summary of the documents they contain should be made and no doubt completed every year, although the law does not mention this, as not so habitually necessary.

The secret archives or safe must be provided with a lock requiring two different keys to open them. One of the keys remains in the hands of the Bishop or Apostolic Administrator, the other in those of the Vicar-General or of the Chancellor when the diocese has no Vicar-General.

The Bishop or Apostolic Administrator may, however, when necessary for whatever reason, open and inspect the secret archives without any witnesses; he asks the Vicar-General or the Chancellor for his key and he returns it, after taking care to lock the archives with both keys.

177. (*b*) Custody of Secret Archives During the Vacancy of the see. Immediately after taking possession of his diocese a Bishop must appoint a priest who will have charge of his key of the secret archives in case the see would become vacant or the Bishop unable to communicate with his diocese because of incapacity, exile, relegation, or captivity. (Can. 429, 1.)

Should the case occur that the Bishop for one of the reasons just mentioned can not communicate with and rule the diocese, the administration passes either to an Apostolic Administrator or to an ecclesiastic delegated for this purpose by the Bishop or to the Vicar-General. In the first case the priest who

has come in possession of the key of the secret archives which the Bishop kept, hands it over to the Administrator; in the second case he gives it to the ecclesiastic delegated to rule the diocese, and in the third he retains it himself, as the Vicar-General has one already and the two keys should not remain in the same hands.

In case of vacancy of the see or whenever a Vicar Capitular or diocesan Administrator is appointed to rule the diocese, the same priest who has come in possession of the Bishop's key places it in the hands of the Vicar Capitular or Administrator immediately after his election; the Vicar-General or the Chancellor hands his over to the first dignity in the Chapter or to the senior Diocesan Consultor.

Before handing over the keys as prescribed by law, the Vicar-General, Chancellor, or priest in question must seal the archives or safe with the seal of the Curia.

During the vacancy or quasi-vacancy of the see no one should open the secret archives except the Vicar Capitular or Administrator of the diocese, who can do so only in cases of urgent necessity and in presence of two Canons or Diocesan Consultors. These have mission to see that no paper is taken out of the safe. They may not consult the documents but only stand as witnesses; the Vicar Capitular alone has the privilege of inspecting them under their eyes but never of removing any one of them. After the inspection the archives ought to be sealed again.

When the new Bishop comes the Vicar Capitular must explain to him the reason he had for unsealing and opening the secret archives if he has done so. Merely unsealing without opening would not fall under this provision.

Nothing in the text of the law implies that the

Vicar-General or priest delegated by the Bishop to administer the diocese in his absence may under any circumstances open the secret archives.

178. 3°. Archives of other Churches. (Can. 383.) (*a*) Cathedral, collegiate, parochial churches, and the churches of confraternities or other institutions should likewise have their own archives and preserve all documents that concern them. Parochial archives, for example, ought to contain the records of baptisms, confirmations, marriages, and deaths, the letters of the Ordinary, an inventory of parish property, deeds affecting the church and other papers of interest to it. (Can. 470, 1522, 1523.) The Bishop must see that an inventory or list of these documents be made as prescribed for those in the diocesan archives (Can. 376) and one copy of it placed in the episcopal, another in the local archives.

(b) The rules and conditions laid down for taking original documents out of the general archives of the diocese apply here also; ordinarily the Bishop or Vicar-General will grant the required permission through the rector of the church.

179. 4°. Communication of Documents. (Can. 384.) (*a*) As said before, only the Bishop or Apostolic Administrator and the Vicar Capitular have access to the secret archives of the diocese. The archives of particular churches may likewise contain certain documents not intended for the public; these ought to remain secret. As for the others, any person whom they may concern has the right to consult them and to ask that a faithful, certified copy of them be made and delivered to him. Custodians refusing this are liable to canonical punishment. (Can. 2406.)

(*a*) This communication of documents kept in

the archives or of copies of them requires prudence and discretion; chancellors or other custodians shall follow in this the rules enacted on the subject by legitimate ecclesiastical authority and in doubtful cases consult the Ordinary of the place.

ARTICLE III

SYNODAL EXAMINERS AND PARISH PRIEST CONSULTORS

(Can. 385-390.)

180. 1. *Origin.* The Council of Trent, having prescribed a serious investigation of the fitness of candidates for vacant parishes commanded Bishops to appoint a certain number of examiners to assist him in this work. (Sess. XXIV, c. 18.) To this original function of the Synodal Examiners, as they were called, the Decree *Maxima Cura* added a new one when it gave them a share in the canonical process for the administrative removal of pastors. (August 20, 1910.) The Code has retained the Synodal Examiners and even increased their attributions.

The same Decree *Maxima Cura* required also for the removal of pastors the intervention in some cases of two parish priests as consultors. This office of parish priest Consultor thus created by Pope Pius X remains under the present discipline.

2. *Appointment.* The appointment of the Synodal Examiners and parish priest Consultors, which every diocese must have, takes place regularly in Synod; the Bishop proposes candidates subject to approval by the Synod. The candidates should be designated by their full name, not by their office; voting may be secret or public. The usual majority, absolute in

the first and second ballots, relative in the subsequent ones, is required for a decision.

The Bishop appoints as many Examiners and Consultors as he deems necessary, but their number should not exceed twelve nor be less than four.

Should any of the Examiners or Consultors die or go out of office before the time comes for a new Synod, the Bishop would substitute others with the advice, the present law does not say the consent, of the Cathedral Chapter or of the Diocesan Consultors.

He follows the same course without special leave from the Holy See, as formerly needed, when Synods are not held.

181. 3. *Qualifications.* The Code has no provision on this subject, leaving previous enactments in their full force: the Council of Trent permits to take Examiners from the regular as well as from the secular clergy; whilst it recommends to choose doctors or licentiates in theology or canon law, it does not exclude other clerics provided they possess the necessary learning.

The Consistorial Congregation has declared it still permissible, after the publication of the Decree *Maxima Cura,* to choose Religious as Examiners and as parish priest Consultors, provided they are parish priests, to take outsiders when the diocese is small or for some other just cause, to have parish priests as Examiners; it does not consider it expedient that the Vicar-General should act as one of the Examiners. (Oct. 3, 1910.)

The same person may act as Examiner and parish priest Consultor, but not in the same cause. (Can. 390.)

4. *Term of Office.* Examiners and Consultors, whether appointed in Synod or outside it, continue in

office for ten years, unless a new Synod be held before that time. Thus Examiners appointed on May 15, 1920, remain in office till May 15, 1930, at midnight, provided no Synod be held during that time. Regularly their appointment holds from Synod to Synod, but never more than ten years, nor beyond the next Synod. Every Synod calls for new appointments; the same persons may be re-appointed several times.

Examiners or Consultors appointed as substitutes for others only complete the term of those whom they replace, *i. e.* remain in office as long as they would have remained and not longer.

In all cases, if they have commenced to treat a certain matter, Examiners or Consultors may continue and finish it after their time has expired. In the removal of a pastor, for example, should the time of the Examiners expire after the invitation to resign has been issued, or that of Consultors after the pastor invited to resign has refused and appealed to the Ordinary, they may go on with the case to the end.

182. 5. *Functions.* (*a*) As under the Tridentine law, Synodal Examiners, under the present discipline, assist Bishops in the appointment of pastors and in ascertaining the fitness of candidates, which includes not only their mental ability but also their moral dispositions and generally all the qualifications required for the office. (Benedict XIV, *Cum Illud,* Dec. 14, 1742, § 16, IV.)

The same Synodal Examiners (Consis. Cong. Oct. 3, 1910, 1) must act with the Bishop in the administrative removal of pastors, as ordained by the Decree *Maxima Cura* (Can. 389, 2148, 2152, 2154, 2159-2161), and also in the proceedings against clerics violating the law of residence (Can. 2171-2175) or

of celibacy (Can. 2178-2180) and against pastors neglecting their duties. (Can. 2182-2184.)

The Bishop may also, if he wishes, have recourse to the services of the Synodal Examiners for the examination of candidates for Orders, of confessors, of preachers, and of the junior clergy, but he may likewise use for this different persons.

(*b*) Parish priest Consultors retain the function committed to them by the Decree *Maxima Cura;* they co-operate with the Bishop in the administrative removal of pastors (Can. 2153, 2154) and also now in their transfer. (Can. 2165.)

The Code recommends to Examiners great diligence in fulfilling their office. Both they and the Consultors must at the beginning of each process take the oath and promise to perform their duty faithfully and without bias, to maintain inviolable the secrets therein made known to them, and not to accept any remuneration, not even under the form of a gift. (Can. 2144; Cons. Congregation, Feb. 15, 1912.)

6. *Removal.* To remove Examiners or Consultors from office would require a grave reason and the advice of the Cathedral Chapter or of the Diocesan Consultors, not their consent any longer. (Can. 388.) The Code gives as a sufficient cause for removal the violation of their oath (Can. 2144,2), which is an extreme case. It admits, no doubt, other less serious causes, but does not specify otherwise how serious they must be, leaving his to the Bishop's judgment.

Chapter V

Chapters of Canons

(Can. 391-422.)

(Bouix, Tractatus de Capitulis; Wernz, II, n. 767; Thomassin, 1. c., P. I, L. III, c. 7-11; Taunton, The Law of the Church, Chapter; Dictionary of Christian Antiquities, Chapter; Catholic Encyclopedia, Canon, Canons Regular, Chapter; Dictionnaire d'Archéologie Chrétienne et de Liturgie, Chanoines, Chapitres; E. Roland, Les Chanoines et les Elections Episcopales du XIe au XIVe Siécle, Aurillac, 1909; The Irish Theological Quarterly, Jan., July., 1908, On the origin of Chapters in Ireland; Blat, l. c., p. 361; Cocchi, p. 268, n. 295; Vermeersch & Creusen, n. 357.)

The members of Cathedral Chapters or Diocesan Consultors assist the Bishop in the administration of the diocese as his ordinary council and thus occupy an important place among those who partake of his authority.

I. ORIGIN OF CHAPTERS

183. 1. The letters of St. Ignatius at the beginning of the second century show us the priests and deacons of the Asiatic churches closely associated with their Bishop in all diocesan work; they form what St. Jerome calls later on his senate. Of their internal organization at this early date, the frequency of their meetings, the matters discussed and the extent of their powers, we know very little and probably no fixed and uniform discipline existed as yet. (H. de Ginoulhiac L'Eglise Chrétienne au Temps de St. Ignace, Paris, 1907.) In the middle of the second century, under Pope Cornelius, the pres-

byterium of the Roman church consisted of forty-six priests and seven deacons; that of Alexandria a century later under Bishop Alexander, of seventeen priests and twenty deacons. At Hippo St. Augustine seems to have been for a time the only priest assisting Bishop Valerius and he had himself only eight priests in his council besides the deacons.

St. Cyprian of Carthage declares that he does not decide anything of importance without consulting his clergy, but they in turn must not forget that all their power comes from him and that consequently they should not exercise it against his will. (Epist. XIV, XXXVIII; XV, XVII.) According to the *Statuta Ecclesiae Antiqua,* a Bishop should not pronounce a judicial sentence without the co-operation of his clerics nor promote candidates to Orders without taking their advice. During the vacancy of the see or in the absence of the Bishop they govern the diocese, as shown by the letter of advice and direction written after the death of Pope Fabian in 250 by the Roman priests and deacons to the clergy of Carthage, entrusted themselves at that time with the administration of their church by St. Cyprian, driven away by the Decian persecution. (Epist. xiv, viii, 2; xxx, xxxvi.) In the choice of a successor they usually have the principal part.

184. 2. In the beginning priests and deacons lived almost exclusively in the episcopal city and close to the Bishop, but when Christian communities had gradually arisen and attained some development, they too had their own clergy. The *rurales,* as they were called in contradistinction to the *civitatenses,* form part also of the Bishop's presbyterium and no written law excludes them from his council, but in practice the position of the civitatenses and at times perhaps their superior

culture gave them a preponderating influence in diocesan affairs. The introduction of the common life for the city clergy at Vercelli under Bishop Eusebius, at Hippo under St. Augustine, and then in many other dioceses of Africa, Italy, Spain, and Gaul, brought them into closer contact still with the head of the diocese and must have increased their power.

185. 3. These first clerical communities included all the priests and deacons of the episcopal city. In the sixth century appear the beginnings of a distinction between the clergy of the cathedral church or the more immediate assistants of the Bishop and the others. When about the year 760 St. Chrodegand, Bishop of Metz, undertakes to restore the common life, generally neglected during the seventh and eighth centuries, he begins with the clergy attached to his cathedral and writes his rule for them (Labbe & Cossart, Sacrosancta Concilia, T. vii, p. 1444; D'Archery, Spicilegium, Parisiis, 1723, T. i, p. 565, can. 4, 5, 20.) Councils, particularly the one held at Aix-la-Chapelle in 817, imposed the same discipline on the clergy of other churches, but these formed distinct groups, which became the collegiate chapters.

Towards the end of the ninth century common life for the clergy commenced to break down again. In the middle of the eleventh the action of two Popes, Nicholas II and Alexander II, in Councils held at Rome, 1059, 1063, and the influence of such men as St. Peter Damian in Italy, Yvo of Chartres in France, and Gerhoh in Germany, brought about a reaction which seemed full of promise; still some Canons refused to follow the movement and others, after accepting the reform, soon found it irksome to dwell in the same house, eat at the same table, sleep in the same dormitory, and submit to the same

discipline. One after the other they threw off the burden, and by the end of the twelfth century comparatively few remained under the canonical rule. Bishops who in the ninth century, or at an earlier date in some countries, had set aside a portion of the Church revenues for the support of their cathedral clergy, now divided these funds among the individual members and assigned to each one the equivalent of the things which, under the former regime had to be supplied him, *praebenda;* hence the name of *prebend* given to the individual portions. (E. Lesne, L'Origine des Menses, Paris, 1910, ch. v, vi; Ducange, Glossarium ad Scriptores Mediae et Infimae Latinitatis, Praebenda.)

186. 4. Although living separately, the members of the cathedral clergy remained a very compact body, well organized, with ample material resources and numerous privileges, which they jealously maintained and extended whenever the occasion presented itself. Thus after a long struggle they succeeded, towards the end of the eleventh century, in conquering the exclusive right of electing the Bishop, without participation of the people or of the rest of the clergy, as ordained in ancient law, and the Lateran Council (1215, Can. 20) at last recognized their claims. They likewise assumed entire control of the diocese at the Bishop's death and during his life demanded a large share in its administration.

Their power and wealth went on increasing and gave them considerable influence even in political affairs, but this soon opened the door to disorders and abuses: frequent conflicts with the Ordinary (A. H. Andreucci, De Tuenda Pace et Concordia Inter Episcopum et Capitulum, in-40, Romae, 1727), worldliness, neglect of spiritual duties, simony. The Councils of the fifteenth century (Constance, Basle)

often refer to the need of reform in chapters. The Council of Trent attempted to effect it (Sess. XXIV, c. 8. 12, 16, 17; Sess. XXII, de Ref., 4), but its decrees met with strong opposition in many quarters and proved powerless against inveterate habits and long-standing customs. The spoliation of chapters in many dioceses by the revolution of the sixteenth or of the eighteenth century removed the chief occasion of abuses. In the nineteenth century chapters could be reorganized on a plan more in harmony with present conditions.

II. DEFINITION AND DIVISIONS OF CHAPTERS AND CANONS. (Can. 391.)

187. 1. *Chapters.* (*a*) The term *capitulum* occurs apparently for the first time in the Council of Verneuil (755), then in that of Aix (789) and of Mayence (813) and in St. Chrodegang's rule. It designates at times the assembly of clerics or monks, at other times the place in which they met after Prime to hear a chapter of the Scriptures or of their rule.

The Code defines a Chapter here as a college of clerics instituted for the purpose of more solemnly celebrating the divine service in a certain church. The members of chapters must be clerics, in which they differ from monks, who might remain in the lay state; they are attached to one special church, which distinguishes them from friars; their chief work is in the choir. Originally they formed the ordinary parish clergy and had all the obligations of the pastoral office, but gradually they limited their external activity to give their attention principally, although not exclusively, to divine worship.

(*b*) Chapters established in cathedral churches are called Cathedral Chapters and have the additional

duty of assisting the Bishop, in the measure determined by canon law, as his senate and council, and of supplying him in the government of the diocese during the vacancy of the see. . . . This is even in a sense their chief object. When in the middle of the last century the Holy See restored cathedral chapters in England, it did so primarily in order not to leave the Bishops without the usual advisers. As no prebends existed in those churches, the Congregation of the Propaganda declared that the canons who, on account of this and also because of the scarcity of priests, had to devote themselves to the cure of souls, to teaching in seminaries, or to other ecclesiastical work, were exempted from the obligation of residing near the cathedral church and of keeping choir regularly, provided they would meet once in a while to celebrate the divine services on the days to be determined by the Provincial Synod. (Ap. 22, 1852.) The same provisions hold in other countries also, where similar conditions prevail, as for example, in Canada. (Prop. September 28, 1852.)

(*c*) Chapters connected with other churches received and have retained the name of *collegiate;* there remain still a few of these, *v.g.* in the Roman Basilicas, although their number has considerably decreased in modern times. Some of them have from papal concessions or immemorial custom the title of distinguished, *insigne* or *perinsigne.*

Canonists divide also chapters into exempt and not exempt, closed or numbered, that is, having a fixed number of members and not closed or admitting as many members as the revenues permit; into secular and regular. This last distinction commences to appear clearly in the eleventh century. When Popes Nicholas II and Alexander II ordered the clergy of

each church to live together under a common rule, some not only obeyed the command but bound themselves by vows and embraced strict poverty, thus becoming real Religious or regulars. The others, who either continued or soon began to live separately or at least did not renounce temporal possessions, received the name of Canons Secular, although some writers found a contradiction in these terms, since canon means a man who lives under rule, a regular. A few years later the Canons Regular adopted a rule compiled chiefly from the writings of St. Augustine, whence the name of Augustinian, a rule, says an ancient author "simple and easy, so that unlearned men and children can walk in it without stumbling, yet, on the other hand, deep and lofty, so that the wise and strong can find in it matter for abundant and perfect contemplation. An elephant can swim in it and a lamb can walk in it safely." In the words of another writer, "The canons are spared the long choral duties, the stern discipline, the sharp reproofs of the black monks and the Spartan simplicity of vesture and diet of the field-working Cistercians." (Speculum Stultorum, Rolls Series.)

188. 2. *Canons.* (*a*) Councils of the fourth and fifth centuries refer to clerics attached to a certain church as being on the canon or rolls, then as canons, of that church. (Antioch, 345, Can. 2, 6, 11; Chalcedon, 451, Can. 2; Orleans, 538, Can. 11.) In the sixth century the term canon serves also to designate clerics who live under the canons or under the canonical, as distinct from the monastic, rule. When the common life had become obligatory for all the clergy, canon was almost synonymous with cleric. (Toledo, 531, Can. 1, 2; Orleans, 588, Can. 1.) Custom afterwards gradually reserved the name for ecclesiastics who retained the community life or those who, as

members of organized bodies in cathedral or other important churches, had preserved something of the ancient canonical rule. (Ducange, Canonicus; Dictionnaire D'Archéologie, Chanoine.)

(*b*) Like the chapters to which they belong, canons may be secular or regular, exempt or not exempt, cathedral, called also major as opposed to collegiate or minor.

Canonists and ancient statutes distinguish also the canons whom they call: *seniores, capitulares,* actually in possession of a canonry, and the *juniores, domicillares,* not yet raised to that rank, usually on account of their age, but destined to, and preparing for it under the authority of the chapter;

Emancipati and not *emancipati,* or scholars, completing their studies under a member of the chapter, the *scholasticus;*

Numerary canons, who form part of the regular number, and supernumerary ones, added over and above. These have no prebend, although they often enjoy the privilege of a vote in capitular meetings and of a stall in choir. Some of them remain permanently without prebend, like our honorary canons at present, others have an expectative, that is, a promise of one of the prebends that will fall vacant, hence the name of *expectantes* or canons *in herba;*

Canons *de floribus et fructibus,* who have all the honorary and useful privileges of a canonry and often opposed to the canons in *herba;*

Non praebendati, praebendati, semi-praebendati, tertiarii, quaternarii, canons having no prebend or a full prebend or one-half, third, fourth of a prebend;

Canons *de stallo,* who have a right to a stall in choir and canons *de terra, de pulvere,* young clerics who sit in choir on a low stool close to the dust;

Forenses, not bound to reside, and *residentiales,*

stationarii, mansionarii; canons, priests, deacons, and subdeacons;

The chapter of Le Puy had canons of poverty, *canonici paupertatis,* and that of Rouen, canons of fifteen pounds, *canonici quindecim marcarum seu librarum;* so called probably from the limitations of their revenues;

Lay canons, usually called honorary. Several councils forbid to admit laymen to membership in chapters and to a share in the prebend or distribution of bread and wine. (Montpellier, 1214, Can. 8; Beziers, 1233, Can. 24.) Exceptions, however, were allowed in favor of princes or sovereigns whom it seemed an honor to see associated with clerics in the celebration of the divine service. The emperors of Germany had the title of canon of Cologne, Aix-la-Chapelle, Bamberg. Historians relate how the canons of St. Peter's church in Rome received into their body Henry VII, Frederick III, Charles V. (Raynaldi, Annales, an. 1311, n. 12, 13, 17; an. 1452, n. 2; an. 1530, n. 45.) The kings of France were canons of St. Hilary of Poitiers, St. Martin of Tours, St. Quentin, Embrun, and since HenryIV of St. John of Lateran, which last title their successors had retained to the end of the nineteenth century.

These lay canons occasionally occupied their stall in choir, vested in surplice or amice and cope and taking part in the psalmody. More habitually they had vicars to represent them. Membership meant for them only a share in the prayers of the chapter and in the revenues of prebends, which often they had founded themselves, but no participation in spiritual powers. (Thomassin, 1, c., P. I., L. 3, c. 64; Ducange, Canonici Honorarii; D'Achery, Spicilegium, T. III, p. 235.)

3. *Inferior Clerics.* Connected with the chapters

we often find a number of clerics who, without belonging to them, depended on their authority and support, and under various names helped the canons in the discharge of their duties: vicars who acted as substitutes, chaplains who assisted in the divine service, coadjutors, *mansionarii,* who took care of the church, *choristae,* singers, *clerici nocturnales,* who sang the night office, etc.

III. CONSTITUTION OF CHAPTERS.

(Can. 392-407.)

189. 1. *Erection.* Under the present law, as for a long time past under the former one, the erection, transformation, and suppression of both cathedral and collegiate chapters are reserved to the Holy See.

2. *Organization.* As corporate bodies chapters possess distinct organisms: dignities which originally involved external jurisdiction and precedence, personates which give only precedence, offices which have neither jurisdiction nor precedence attached to them, and lower benefices. Particular statutes fix the details of this hierarchy. Usually they reckon as dignitaries the archdeacon, archpriest, dean, or provost. The precentor, who directs the singing or psalmody, and his assistant, the succentor, the chancellor, the sacristan, guardian, frequently enjoyed a right of precedence. The chief offices are those of theologian, penitentiary, punctator, etc. After them came various functions of a lower order committed to beneficiaries who did not belong to the chapter proper, such as the mansionarii, singers, porters, etc.

At present, as dignities do not have external jurisdiction annexed to them, they do not differ from personates. The Code does not mention the latter and only requires for a chapter dignities and simple

canons, among whom the various offices will be distributed. There may also be minor benefices of the same or of different degrees, but now as formerly the chapter consists of the dignities and canons; the lower beneficiaries or mansionarii do not belong to it. Particular statutes may even exclude the dignitaries from real membership.

190. 3. *Number of Members.* (*a*) Some ancient chapters had as many as eighty, one hundred, or more canons, without counting the lower beneficiaries. Common law does not specify any minimum number; the old saying *tres faciunt capitulum* remains no doubt true, and even if at any time there was only one canon left to represent a chapter the capitular rights would continue vested in him. But to carry out the ceremonies of the choir with becoming decorum three or four persons do not suffice. The decree for the erection of cathedral chapters in England calls for at least one dignity and ten canons. (Nov. 19, 1850.)

(*b*) In particular cases the number of prebends in a numbered chapter determines the number of prebendaries. In a non-numbered chapter there may be as many prebendaries as the Bishop, after taking the advice of the canons, judges that the capitular revenues can decently support.

With the consent of the chapter the Bishop may add new prebends, thus increasing the number of canons, whether prebendary or beneficiary, but he could not establish new dignities without authorization from the Holy See.

191. 4. *Endowment.* (*a*) Necessity. Normally a chapter must possess revenues sufficient for the support of its members. To institute a new canonry without annexing to it proper income would require a special permission from the Pope.

(*b*) In case of insufficiency. In cathedral chapters and also in collegiate chapters decorated with the title of distinguished, *insignia,* should the income from the prebends become insufficient even with the addition of the daily distributions for the decent support of the canons, the Bishop must remedy this either by uniting some simple benefices to the prebends with the consent of the chapter and after obtaining authorization from the Holy See, or if this proves impossible or inadequate, by suppressing some prebends, with the consent of the patron should they be under lay patronage, and applying their revenues to the daily distribution among the remaining prebendaries. He may thus reduce the number of canons, but he should take care to have enough left to ensure the becoming celebration of the divine service and uphold the dignity of the church.

192. (*c*) Daily distributions. According to Benedict XIV it is Yvo of Chartres who first introduced them. (Inst. Eccl., 207, §3.) This Bishop, in order to encourage punctual and faithful attendance at the divine service, decided to give to his canons half of the fruits of a provostry to be distributed among those present to the exclusion of the absentees. Other Prelates adopted soon this practice and it became before long a general law. (32, X, III, 5; Bouix, p. 148.) The Council of Trent sanctioned it with its authority (Sess. XXI, c. 3, de Ref.), commanding Bishops, where no daily distributions existed or where they were so slight that canons disregarded them, to set aside a third part of all the income from every prebend for distribution among the members of the chapter present at the divine service.

By decree of Nov. 30, 1910 (*Decorem domus Dei*) Pope Pius X ordained that in the Roman chapters the whole of the income should be converted

into distributions and the Commission for the Interpretation of the Code declared, Oct. 16, 1919 (A. A. S., xi, p. 476), that the decree remained in force after the publication of the Code as a particular legislation for chapters of Rome.

For the universal Church the Code renews substantially the prescriptions of Trent on this subject:

(i) In cathedral or collegiate churches which have no daily distributions or only such as will likely not be minded, the Bishop must set apart one-third of all the revenues of dignities, canonries, offices and benefices and turn them into daily distributions.

(ii) If the Bishop can not, for whatever cause, arrange to have daily distributions, he must replace them by pecuniary fines of about the same amount which he will impose upon negligent canons, whether they be dignitaries or simple beneficiaries.

(iii) The distributions forfeited by the negligent go the assiduous and the legislator condemns any secret agreement or abatement that would tend to defeat the purpose of this measure. If the dignitaries have revenues distinct and separate from those of the other canons, the distributions lost by them go to the other dignitaries present if there are any, else to the church as far as it needs it, or to some other pious institution, according to the good pleasure of the Bishop.

(iv) In order to enforce these regulations each chapter must appoint one or two officials, called censors or punctators, to make note every day of those absent from the services. Before taking office the punctators should swear in presence of the chapter or of its presiding officer that they will fulfill their duty faithfully. They are appointed in the manner and for the period of time determined by custom or particular statute. The Bishop may also

appoint a punctator of his choice if he fears secret understandings or collusion, or for other reasons. If the punctators were absent the senior canon present would take their place.

Canonists, explaining more in detail the duties of punctators, teach that they must note as absent canons who come to Mass after the last Kyrie eleison, those who do not chant, those who talk or wander about in the choir or leave before the end of the service, or do not wear the choir dress, etc.

The S. C. C. reprobated the custom of considering as present at matins any one who came before the end of the first nocturn or before the end of the sixth psalm in the ferial office. (May 24, 1674.)

193. 5. *Dignities.* The Code does not define anything as to the number of dignities required in a chapter, or as to their name and individual prerogatives; neither does it treat here of any dignity in particular but only lays down some general rules regarding their institution, appointment to them, the qualifications they suppose, and the rights or duties attached to them; the rest it leaves to particular legislation or statutes.

(*a*) The erection of dignities in any chapter is reserved to the Holy See but the Bishop may, with the consent of the chapter, restore those which may have become extinct.

(*b*) The conferring of dignities both in cathedral and collegiate chapters is likewise reserved to the Apostolic See.

Formerly, in some chapters, when a dignity or even simple canonry became vacant the senior canon had the privilege of applying for it. This right of option, as it is called, the Code has abrogated, all customs to the contrary notwithstanding, unless it had been stipulated in the law of foundation.

(*c*) In a cathedral chapter, at least the first dignitary, in English chapters the Provost, should, if possible, be a doctor in theology or canon law and a cleric possessing that degree should, all things being equal, have the preference.

(*d*) Unless the capitular statutes provide otherwise, it is the right and duty of the dignitaries of the chapter and next to them of the Canons in the order of precedence:

(i) To take the Bishop's place, when needed, in the celebration of the sacred functions on the more solemn festivals.

(ii) To present to the Bishop who celebrates pontifically the sprinkler at the door of the church and to act as assistant priest.

(iii) To administer the last Sacraments to the Bishop when he is sick and to celebrate the funeral service after his death.

(iv) To convoke the chapter and preside over it, to prescribe and regulate whatever pertains to the direction of the choir, provided the dignitaries in question belong to the chapter.

194. 6. *Offices.* Although it admits of, or even supposes the existence in chapters of other offices, the common law formally treats here solely of those of penitentiary, theologian and vicar.

(*a*) Penitentiary and Theologian. (i) Institution. In the early Church Bishops reserved to themselves the administration of penance, but if this proved too heavy a burden, as often happened in large churches, they had to assist them a priest who received the name of penitentiary. The historian Socrates tells us that after the Decian persecution Bishops added to the ecclesiastical roll a penitentiary priest, that those who had fallen might make to him confession of their sins. (L. vi, c. 19.) Nectarius

abolished this office in Constantinople about the year 391, but it remained in other places. The Liber Pontificalis seems to attest its existence in Rome under Popes Marcellus (308-309) and Simplicius (468-483.) (Dictionnaire de Théologie, Confession, col. 840, 842.)

When in the course of time, confessions growing more frequent, priests had become ordinary ministers of penance, the Bishop continued to be the chief dispenser of this Sacrament, but he now more habitually. discharged this office through a vicar, the penitentiary, whom Councils refer to as as the general confessor of the diocese. (York, 1194, Can. 17.) In 1218, Euvrard, Bishop of Amiens, erected in his chapter three personates, those of precentor, schoolmaster, and penitentiary. To the last one he assigned a revenue of twenty pounds and granted power to hear the confessions of all the faithful of the diocese, reserving to himself only those of the pastors, magnates, and barons. (Spicilegium, vol. iii, p. 589.) Generally, before the Council of Trent, the penitentiary did not belong to the chapter; this Synod raised him to the rank of beneficiary or dignitary and decreed that wherever possible the first vacant prebend should be conferred upon him. (Sess. XXIV, C. 8.)

The same Council placed likewise among beneficed canons the ecclesiastic who, under the name of theologian had mission to teach scripture and theology. His office dated at least from the thirteenth century. In the Council of Lateran (1215, Can. 11) Innocent III had demanded that in every metropolitan church a theologian be appointed to teach priests and others the Scripture and whatever pertains to the cure of souls. The Council of Trent extended this obligation to all cathedral churches. Particular decrees determined afterwards more in detail the

object of the theologian's teaching, the frequency of the lessons and those who had to attend. A decision of the Congregation of Council made this compulsory on all the canons and the rest of the cathedral clergy. Another ordinance punishes with loss of the distributions canons who neglect this duty. (Thomassin, 1. c., P. I, L. II, c. x.)

By the present law no cathedral church should be without canon theologian nor if possible without canon penitentiary. These two offices may also be established in collegiate churches, particularly in the distinguished ones.

195. (ii) Qualifications. The canon theologian and the canon penitentiary must be chosen amongst those who, all circumstances considered, are best qualified for the office. Other things being equal, a doctor in theology must be preferred for canon theologian and a doctor in theology or canon law for penitentiary. It would also be proper, although not strictly required, that the canon penitentiary should have completed his thirtieth year.

A thorough investigation as to the life, moral conduct, and doctrine of the candidates should precede the conferring of the prebends and also a concursus where prescribed.

The canon penitentiary, not the theologian, is forbidden to hold in the diocese any office which has jurisdiction in the external forum attached to it. (Can. 399.)

(iii) Duties. (Can. 400-401.) The canon theologian has for his mission to expound the Scriptures publicly in church on the days and hours designated by the Bishop with the advice of the chapter. The Ordinary may, however, if he deems it more useful, commit to him the explanation of some other portion of Catholic doctrine. The canon theologian must

discharge his office personally, and in case he would be prevented from doing so for more than six months he would have to procure at his own expense a substitute, whom the Bishop would appoint. For a grave reason the Bishop may use the canon theologian to teach the sacred sciences in the Seminary instead of lecturing in church.

The canon penitentiary, either of a cathedral or collegiate, church has by law the ordinary power, which, however, he can not delegate, of absolving, even from sins and censures reserved to the Bishop, all in the diocese including strangers and outside of the diocese all who belong to it. He must be in the confessional assigned to him in the capitular church at the time which the Bishop judges more convenient for the faithful and place himself at the disposal of those who come to make to him confession of their sins, even during the divine service.

(*b*) Vicar. When a chapter has charge of souls it must commit their care to a vicar, who acts then as pastor. The Code treats this subject in the section on parochial vicars. (Can. 471.)

196. 7. *Simple Canonries and Benefices.* (*a*) Appointment to them. The Bishop has power, after consulting the chapter, to appoint to all canonicates and benefices, not to dignities, in both cathedral and collegiate chapters. All customs to the contrary are reproved and privileges withdrawn. Conditions laid down in the law of foundation continue, however, to hold and the provision which reserves to the Holy See the conferring of certain benefices applies also to canonries. (Can. 1435.) We do not find in the present law the old distinction between the papal and episcopal months nor the division of power between the Bishop and the chapter in this matter.

(*b*) Qualifications for canonicates. The Bishop

should choose his canons among the priests distinguished for their learning and integrity of life. All other things being equal, he should give the preference to those who have obtained the doctorate in theology or canon law in some university, or have rendered important services in the sacred ministry or as teachers.

(*c*) Taking possession. The appointment obtains its full effect when Canons or beneficiaries, and this applies likewise to dignitaries, take possession of their benefice in the manner prescribed by law. (Can. 1443-1445.) From this moment they have a right to the insignia and privileges of their respective offices, to a stall in choir, the fruits and distributions, and a vote in capitular meetings.

Before taking possession they must make a profession of faith, as ordained in the Article on this subject. (Can. 1406-1408.)

197. 8. *Honorary Canonries.* (*a*) Nature. Custom introduced and law afterwards sanctioned, at least implicitly, the practice of giving the title of canon to certain ecclesiastics, who thus become affiliated with a chapter without, however, really forming part of it. They receive no prebend nor right to any, do not contract the obligations of titular canons and have no vote or place in capitular assemblies. They acquire merely honorary privileges, chiefly those of wearing certain insignia, precedence over other clerics, and a seat in choir next to titular canons.

(*b*) Appointment. The Bishop alone, to the exclusion of the Vicar-General or Vicar Capitular, has authority to appoint honorary canons, whether in or outside the diocese. He needs for this the advice of the chapter to which the new canon will belong,

and the legislator warns him to exercise his prerogative in this matter rarely and cautiously.

When he wishes to appoint as canon a priest of another diocese he must, besides taking the advice of his own chapter, obtain the consent of the candidate's Ordinary, otherwise the appointment would be null; he has also to let the same Ordinary know what insignia and what privileges the appointee will become entitled to.

The number of honorary canons outside the diocese should be inferior by one third to that of titular canons. Common law does not set any limits to the number of honorary canons belonging to the diocese. The first Westminster Council had forbidden the appointment of any honorary canons. A subsequent decree of the Propaganda allowed three for each diocese. (Ap. 2, 1903.)

(*c*) Use of Privileges. Honorary canons of Roman basilicas or collegiate churches may not use their privileges or insignia outside their church or its dependencies. The honorary canons of other churches enjoy their privileges and may wear their insignia in the whole diocese in which they received their appointment but not in any other, except when they accompany their Bishop or represent either him or the chapter at a Council or at other solemnities.

IV. RIGHTS AND DUTIES OF CHAPTERS.

(Can. 408-409.)

198. 1. *Precedence.* The cathedral chapter has precedence over a collegiate chapter even though the latter be one called distinguished, *insigne,* and in its own church. A distinguished collegiate chapter has precedence over one which does not have this title.

Between the members of the same chapter the order of precedence is as follows, unless particular statutes or legitimate custom rule otherwise: first the dignitaries in the order of the dignities as determined by capitular statutes or common law, then titular canons in the order of seniority in the chapter, not in the priesthood, honorary canons and beneficiaries. Dignitaries or canons having the episcopal character would always take precedence of all who are only in priestly orders.

In chapters which have presbyterial, diaconal, and sub-diaconal prebends as, for example, the chapter of Dublin, the order determines the precedence, and within the order itself it is seniority of ordination not of admission into the chapter: canons priests precede canons deacons, and between two canons who have a diaconal prebend the one who was ordained first precedes the other.

2. *Insignia.* Generally the insignia of canons consist of the rochet, mozzetta, and cappa; but particular indults or ancient custom may add many other distinctions. Some canons wear a ring, purple cassock, even the mitre on certain occasions. The bull of erection or indults regulate all this. Bishops wear in choir the episcopal dress. Canons who would appear in choir without their canonical habit would be considered as absent.

As said already, canons may, under the present law, wear their canonical dress or special insignia in any church of the diocese, and the law does not except the exempt ones. They may not wear it outside of the diocese except when they accompany the Bishop, or when they represent him or the chapter at Councils or other solemnities. Customs to the contrary have been abrogated.

199. 3. *Capitular Statutes.* (Can. 410.) Every chapter ought to have its statutes, which all dignitaries, canons, and beneficiaries should observe religiously.

These statutes must be enacted in a regular meeting of the chapter, in the manner prescribed for acts of moral persons (Can. 101); then they are submitted to the Bishop for approval, after which they can not be altered or abrogated without his permission.

If in spite of the Bishop's admonition the chapter neglects to adopt statutes, and six months have elapsed since the warning was received, the Bishop should frame statutes himself and impose them on the chapter.

4. *Chapter Meetings.* (Can. 411.) The canons should meet at stated times and places to deliberate on affairs concerning the chapter or church. These are their regular, ordinary meetings; they may have extraordinary ones also whenever this seems expedient to the Bishop, the president of the chapter, or the majority of the canons.

For the ordinary and regular meetings no special convocation is necessary. For the extraordinary ones a summons must be issued by the person and in the form determined in the statutes and in accordance with laws regulating the acts of moral bodies.

In chapter meetings all titular, not honorary, canons have a vote; the dignitaries also if they belong to the chapter, as well as the canons; regularly they do, unless particular statutes provide otherwise.

200. 5. *Attendance on the Bishop.* (Can. 412.) (*a*) The canons of a cathedral or collegiate church are bound, if, invited, to assist and serve the Bishop when he celebrates a pontifical High Mass or some

other pontifical function in other churches of the city or suburbs, provided a sufficient number of canons remain for the cathedral or collegiate church, of which the Bishop is the judge.

(*b*) Canons are obliged to go to the house of the Bishop and accompany him to the cathedral whenever he comes to celebrate or to assist at the divine offices in cappa magna. They must accompany him back to his house after the service. Canonists call this the duty of association. (Taunton, l. c., p. 165.)

(*c*) The Bishop has the right to take and keep with him two canons of the cathedral or of a collegiate chapter, to employ them in ministerial work or in the service of the diocese.

201. 6. *Celebration of the Divine Service.* (Can. 413, 416, 417.) (*a*) Obligation. It is the duty of every chapter regularly organized to celebrate the divine service, every day, in choir, complying otherwise with all the ordinances laid down in the foundation laws.

The divine service for them includes the psalmody of the canonical hours, that is, at least the recitation in a loud tone of voice if not the singing thereof and the celebration with chant of the conventual Mass or Mass corresponding to the office of the day and at which the canons assist. Besides this daily Mass there are other Masses prescribed by the rubrics or obligatory by reason of pious foundations.

(*b*) Conventual Mass. It must be chanted every day in presence of the chapter and applied for benefactors in general. When, however, the Bishop or some one else in his place celebrates pontifical Mass in the church the canon who says the conventual Mass that week does not have to sing it.

If infirmity prevents the member of the chapter whose turn it is to celebrate the conventual Mass

from doing so, he need not give a stipend to the one who takes his place and applies the Mass for the benefactors, unless capitular statutes or particular custom so ordain.

If the custom exists to offer a stipend to the celebrant of the conventual Mass out of the distributions or by levying a contribution on the fruits of all the prebends, the common law does not condemn it.

(*c*) Various Liturgical Functions. The members of the chapter have to act not only as celebrants but also as deacons or subdeacons at Mass and other sacred functions. The capitular statutes should distribute these duties among the canons and beneficiaries as evenly as possible according to circumstances and assign to each one his turn. But they should dispense dignitaries, the canon penitentiary, the theologian and canons having presbyterial prebends, where this distinction exists, from serving as deacons or subdeacons.

202. 7. *Care of the Parish.* (Can. 415.) When the cathedral or collegiate church is at the same time parish church, unless provided otherwise by apostolic indult or by special agreement entered into at the time of the erection of the parish with the Bishop's approval, the relative rights and obligations of the chapter and pastor are determined by the following rules.

(*a*) It is for the pastor: (i) To say Mass for the people as demanded of parish priests (Can. 466), to preach the Christian doctrine and teach the people on the days and in the manner prescribed by law. (Can. 1344.)

(ii) To keep the parochial books and take from them attestations, like baptism or marriage certificates.

(iii) To perform the functions reserved to pastors by common law, as enumerated in Can. 462. This includes the right of holding funeral services. By way of exception this right belongs to the chapter in one case, *viz.*, in that of a dignitary of the chapter, a canon even only honorary, or a beneficiary whose funeral, including the Mass, must by law be held in the capitular church.

(iv) To perform all other functions usually held in parish churches even though not strictly parochial, such as exposition and benediction of the Blessed Sacrament, Novenas, etc., provided they do not interfere with the choir service or the chapter do not perform them.

(v) To collect alms, outside of the capitular church, for the benefit of the parishioners, to accept them when offered directly or indirectly, to administer them according to the wishes of the donors.

(*b*) The chapter (i) has the care of the Blessed Sacrament, but one of the keys of the tabernacle must remain in the hands of the pastor.

(ii) It watches over the faithful observance of liturgical rules by the pastor in functions performed within the capitular church.

(iii) It takes care of the church and administers its property and pious legacies.

The legislator recommends to both chapter and pastor not to interfere with each other's functions and duties and provides that should any conflict arise between them the Bishop is to settle the controversy, as it is for him also to see to it, and very particularly, that catechetical instruction be given and the Gospel explained to the faithful at the time most convenient for them.

Not only should the chapter not place obstacles to the proper discharge of parochial duties by the

pastor, but canons ought to remember that charity obliges them to help him in every way that the Ordinary will determine, particularly when he has not a sufficient number of assistants.

V. RIGHTS AND DUTIES OF INDIVIDUAL CANONS. (Can. 414, 418-421.)

203. 1. *Choir Duties.* Each member of a chapter holding a choir benefice is bound personally to assist at the divine services, in choir, every day, unless an apostolic indult, or the law of foundation permits the services to be celebrated by one portion of the chapter each day, for example, by one-half or one third of the canons, who take their turn for this, as ruled by particular statutes. Assistance means not mere material presence, but active cooperation in the recitation or singing, under pain of losing the distributions.

2. *Residence.* The duty of residence follows from the obligation of assisting at the divine services as necessary, and in the measure in which it is necessary, as a condition, for it. Those, therefore, who on certain days need not be present in choir are not bound on those days to reside in the place of their benefice. Neglect of the law of residence entails loss of the fruits of the benefice and eventually, if persevered in, of the benefice itself. (Can. 2381.)

3. *Vacation.* (*a*) Canons and beneficiaries, even though bound to assist at the divine service every day in choir, may take a yearly vacation of three months, either continuous or interrupted, provided particular statutes or legitimate custom do not shorten their free time. The present law rejects all customs that would lengthen it.

(*b*) They may not, without the Bishop's permis-

sion, take their vacation during Lent or Advent, or on the principal feast days of the year; nor should more than one-third take it at the same time, that the choir service may not suffer too much.

(*c*) During the vacation they lose all the distributions, even if the other capitulars consented to let them have their share; but they receive the income from the prebend or two-thirds of the distributions if these constituted all the fruits of the prebend.

204. 4. *Use of Substitutes.* (Can. 419.) (*a*) In those churches in which all the capitulars have to assist at the divine office every day none of them can serve as a substitute for another, since he has his personal duty to fulfill. Even where the obligation of daily attendance does not exist, those whose turn it is to assist can not do so through a substitute except in particular cases, for a just and reasonable cause and on condition that the substitute himself be free from choir duty at the time and that he be a canon or beneficiary of the church, according as he has to replace a canon or beneficiary.

(*b*) A capitular having the obligation on the same day of saying Mass for the people and of celebrating the conventual Mass should discharge the latter obligation on that day personally and the former either personally some other day or on the day itself through a substitute.

5. *Absence from Choir without Loss of the Fruits of the Prebend or of the Distributions.* (*a*) The following retain the right to the revenues of their prebend and to the daily distributions even though not present in choir.

(i) Canons who have obtained the indult of "jubilation," as explained further on.

(ii) The canon theologian on the days on which

he has to fulfill his special office, even though not actually teaching during the service.

(iii) The canon penitentiary whilst he is actually engaged in hearing confessions.

(iv) The parochial vicar or any other member of the chapter deputed by the Bishop to act as pastor or assistant, while occupied in parochial work.

(v) Those prevented by sickness or any other physical impediment from attending choir.

(vi) Those on a mission for the Roman Pontiff or in his personal service.

(vii) Those making their retreat as prescribed by law. (Can. 126.) This excuse holds once a year.

(viii) Those who make the visit *ad limina* with the Bishop or in his place.

(ix) Those who are sent by the Bishop or chapter to a general, plenary, or provincial Council or to the diocesan Synod.

(x) Those who absent themselves from choir, with the consent of the chapter and the tacit permission of the Bishop, in the interest of the chapter itself or of their church.

(xi) Those who assist the Bishop at some pontifical function as required by law. (Can. 412.)

(xii) Those who accompany the Bishop in the visitation of the diocese or who make the visitation in his name and by his order.

(xiii) Those who are employed in the processes of beatification or canonization or who appear as witnesses in the same causes but only on the days and for the hours in which they are so engaged.

(xiv) Parish priest consultors, synodal judges, and examiners, while occupied in their office.

(*b*) Those under n. i, vii, xi, xiii, not the others, are also entitled to the special distributions called

inter praesentes, unless the founders have expressly stipulated otherwise.

205. 6. *Excuses from Presence in Choir with Loss of the Distributions.* (Can. 421.) (*a*) The following are excused from choir service and receive the fruits of their prebend but not the daily distribution.

(i) Those who, with the permission of the local Ordinary, are giving public lessons on theology or canon law in schools recognized by the Church. Theology here includes all sciences that form part of a complete theological course, as the Commission of Interpretation declared, Nov. 24, 1920. (N. R. T. Mars 1921.)

(ii) Those who, with the permission of the Ordinary, are studying theology or canon law in some public institution recognized by the Church.

(iii) The Vicar Capitular, the Vicar-General, the Official, and the Chancellor, should they belong to the chapter, but only while occupied in their office.

(iv) The canons whom the Bishop has taken to assist him in the ecclesiastical ministry or the service of the diocese. (Can. 412, § 2.)

(*b*) In case the whole income of the prebends would consist of, or amount to, less than one-third, of the distributions, the capitulars just enumerated would receive two-thirds of the revenues, including distributions and income of prebends.

VI. CANONS JUBILARIAN OR EMERITI. (Can. 422.)

206. (*a*) When a canon prebendary has done continuous and faithful choir service for forty years in the same church or in different churches of the same city or at least diocese, he may obtain from

the Holy See the indult called "of jubilation," making him canon emeritus or jubilarian. He has no strict right to this privilege; the Holy See alone can grant it and does so on the proper assurance, usually from the Ordinary, that the required conditions of fidelity and long perseverance exist.

(*b*) The canon jubilarian is no longer bound to attend choir or reside near his church and he nevertheless receives the fruits of his prebend, the daily distributions, and also those distributions called *inter praesentes,* because they are very particularly intended for those really present at the divine office. The jubilarians share in these too, unless the express will of the founders or benefactors, the statutes of the church, or custom do not permit it.

(*c*) The present law, which does not admit the right of optioning either for dignities or simple canonries, excepts the case in which this right was reserved in the law of foundation, but even then it does not allow jubilarians to take advantage of this concession.

Chapter VI

Diocesan Consultors

(Can. 423-428.)

(Smith, Elements of Ecclesiastical Law, vol. i, Ecclesiastical Persons, P. iv, c. i.; Ferreres, Institutiones Canonicæ, T. I, n. 713; Blat, 1. c., p. 392.)

Where Cathedral chapters do not exist, Bishops must have to assist them in the government of their diocese a body of priests called Diocesan Consultors.

I. INSTITUTION OF DIOCESAN CONSULTORS

207. 1. Diocesan consultors are of comparatively recent institution. They receive recognition by the common law for the first time in the Code; till now they had only the sanction of particular legislation. The Congregation of the Propaganda had introduced them in churches placed under its care, in order to provide Bishops who could not have chapters with a board of advisers to help them in the administration first of the temporal property then of the whole diocese. (Letters to the Vicars Apostolic of India, Sept. 8, 1869; Instruction to the Vicars Apostolic of China, Oct. 18, 1883, Coll., P. F., II, n. 1606, Romae 1907.)

In the United States the Fathers of the first Plenary Council held at Baltimore in 1852, exhort all the Bishops to choose among their clergy some priests as their consultors or advisers, and they praise the custom existing already in some places of calling a meeting of the consultors every month at a fixed date for the discussion of diocesan affairs.

(VI.) The second Plenary Council renewed that recommendation in still stronger terms (1866, n. 70), but as it did not perhaps even then obtain its full effect the third Plenary Council changed it into a formal law. (Baltimore, 1884, n. 17.)

By this time the Holy See, in order to bring the organization of the American Church more and more in conformity with common law, had thought of establishing chapters in the United States, not with all their duties and privileges, but as they exist, for example, in England, Ireland, or Holland. The Propaganda proposed this plan to the Archbishops who had met in Rome in 1883 to prepare for the third Plenary Council. The Prelates, however, did not think that the time had come yet for such a measure, and the Congregation then suggested the appointment of consultors until conditions would permit the erection of chapters. Consequently the Fathers of the third Plenary Council of Baltimore decreed that in every diocese a certain number of priests should be appointed as consultors to act as the regular advisers of the Bishops until circumstances would make it possible to replace them by canons, as demanded by the common law. (N. 17.) At the same time, to give efficacy to their enactment, they defined the rights and duties of the consultors, their mode of appointment, number, qualifications, and term of office. This legislation served as a pattern for subsequent Synods (Plenary Council of Australia held at Sydney, 1885, n. 29-34; Council of Latin America held at Rome, 1899, n. 242-246), and now it has passed into the Code with only a few modifications.

208. 2. Under the present law, unless the Holy See has made some different provision for a particular place, wherever it is not yet possible to establish

cathedral chapters or to restore them if they have existed before, Bishops, and the same rule applies to secular Prelates Nullius (Can. 326), must appoint diocesan consultors to assist them in the discharge of their duties. The Holy See alone can dispense from this rule, made originally for certain churches but extended now to all dioceses in which similar conditions prevail or which have no chapter. It remains nevertheless true that whenever possible each diocese should have a cathedral chapter.

II. NUMBER AND QUALIFICATIONS OF CONSULTORS

209. 1. There should be at least six consultors for each diocese; four will suffice, however, where the number of priests is small. The Baltimore and Australia Councils admitted even a minimum of two. Large dioceses may have more than six.

2. Consultors must be priests distinguished for their piety, integrity of life, learning, and prudence.

The Congregation of the Council declared Feb. 27, 1914, that nothing prevented the Vicar-General from belonging to the college of consultors, since he may belong to the chapter, but it added that where the consultors were very few it would not be proper or advisable to appoint him to that office, in order, no doubt, that the body of consultors may retain sufficient independence and not seem too much identified with the Bishop.

3. Before taking up their functions the consultors must promise under oath to discharge their duties faithfully and without exception of persons. This oath should naturally be taken in presence of the Ordinary or his delegate.

4. Like canons, consultors must live in the episcopal city or not far from it, so that the Bishop may

easily call them when needed and obtain their assistance without too much delay.

III. APPOINTMENT AND TERM OF OFFICE

210. 1. Under the discipline of the Baltimore Council the Bishop appointed one half of the consultors freely and the other half on presentation by the clergy of the diocese. The present law does not retain this restriction on the Bishop's power but gives him complete independence in the choice of all his counsellors, except in one case about to be mentioned.

2. Consultors are appointed for three years. To remove any one of them before the expiration of his term would require a grave reason and the advice of the other consultors. The Baltimore Council admits as sufficient causes for removal: age, infirmity or any other incapacity, an offence rendering one unworthy of this honorable position, culpable loss of reputation. (N. 21; cf. Council of Latin America, a. 244.)

3. At the end of the three years the Bishop may appoint new consultors or confirm those in office for another term, and even eventually, if he wishes, for several successive terms.

4. Should any one of the consultors go out of office, for whatever reason—death, resignation, removal—before the end of the three years, the Bishop, this time with the advice of his consultors, names a substitute to complete the term. At the end of the term the substitute may be confirmed for the usual three years.

5. When the expiration of the consultors' time falls during the vacancy of the episcopal see, they remain in office till the arrival of the new Bishop. The latter must make provision for his board of consultors within six months from the day he takes

possession of his see, which does not necessarily coincide with the day of his arrival into the diocese, since he might take possession by proxy before coming personally.

6. If during the vacancy of the see one of the consultors dies or resigns, the Vicar Capitular or Administrator should, in those two cases but in those only, and with the consent, not merely the advice, of the remaining consultors, appoint another one, who holds his office as long as the vacancy lasts, that is, till the new Bishop takes possession, either personally by coming to the diocese or by proxy some time, perhaps, before his arrival. At the moment the vacancy ceases the consultor appointed by the Administrator goes out of office unless he is confirmed by the Ordinary.

IV. NATURE OF THE OFFICE

211. 1. Diocesan consultors should not be confounded with the parish priest consultors introduced by the decree *Maxima Cura* of Aug. 20, 1910. The latter intervene only in the administrative removal of parish priests; the former constitute the ordinary council of the Bishop.

2. They take the place of cathedral chapters as the Bishop's senate, but not as entrusted with solemn divine worship in the cathedral church; hence we must apply to them all that the Code enacts concerning the rights and duties of canons in regard to the administration of the diocese either as assistants to the Bishop or as his substitutes during the vacancy of the see. They do not, however, enjoy those prerogatives which canonists call internal rights and which belong to chapters as separate bodies, *v. g.*, the right to wear certain insignia, to make special statutes for themselves, to hold property;

neither have they the obligations connected with the celebration of the divine service in choir or attendance on the Bishop at pontifical functions.

3. Boards of diocesan consultors do not form an organic body like chapters, with a presiding officer and other officials of their own. In speaking of them the Code uses the somewhat general term of *coetus,* assembly; still the Congregation of Council refers to them as colleges. By assimilating them to chapters the Code clearly implies that the rules governing moral collegiate persons apply to them, and the third Plenary Council of Baltimore explicitly states that consultors must give their advice or consent *collegialiter,* in a body. It would not suffice for the Bishop to consult them individually. They may express their views orally or in writing, publicly or by secret ballot, if they choose. (N. 21.)

V. RIGHTS AND DUTIES OF DIOCESAN CONSULTORS

212. 1. *As the Bishop's Council.* The chief duty of consultors is to assist the Bishop with their advice whenever required. According to the Baltimore Synod the Bishop should call a meeting of his consultors four times or at least twice a year, at stated periods, and on other occasions as often as the affairs of the diocese require. The Code has no special provision on the frequency of these meetings. They are obligatory, on general principles, whenever prudence commands them and specifically when questions come up which the Ordinary can not decide without the advice or consent of the chapter or consultors. What these questions are the legislator does not state here, but he points them out when treating of them in their respective places in the Code. They differ little from those enumerated in the Council

of Baltimore and are fewer than under the former common law.

(*a*) The Ordinary needs the consent of his chapter or consultors: (i) To alienate ecclesiastical property valued between 1000 and 30,000 francs (Can. 1532, § 3.) (ii) To lease the same property for over nine months or to lease property worth over 30,000 francs for less than nine months. (Can. 1541, § 2, 10, 2°.) The Baltimore Council required only the advice of consultors for the alienation of property worth over $5000; Bishops in the United States usually have indults giving them greater liberty in financial transactions than the common law allows; (iii) To appoint a consultor during the vacancy of the see. (Can. 426, § 5.)

(*b*) The Code requires the advice of the chapter or board of consultors chiefly in the following cases:

(i) To unite, transfer, divide, or dismember benefices or parishes. (Can. 1428.) The ancient law demanded the consent of the chapter for this.

(ii) To appoint the commission of discipline and temporal administration for the diocesan Seminary. (Can. 1359.)

(iii) To replace a consultor who goes out of office before the end of his term (Can. 426) or to remove one. (Can. 428.)

(iv) To appoint synodal examiners or parish priest consultors out of Synod. (Can. 386.)

(v) To draw up the list of funeral fees in the diocese. (Can. 1234.)

(vi) To convert removable into irremovable parishes or to declare removable parishes newly erected. (Can. 454, § 3.)

(vii) To reserve sins. (Can. 895.)

(viii) To appoint the council of temporal administration. (Can. 1520.)

According to the Council of Baltimore the Bishop should also take the advice of his consultors in convening a Synod and publishing its decrees, in determining the salaries of pastors or the pensions of those who have resigned or been removed, in fixing fees for various ecclesiastical ministrations; if he wishes to give a parish over to Religious or impose an extraordinary tax above that which the canons permit.

The Code does not mention any intervention of chapters in the convocation of Synods or promulgation of their decrees (Can. 357-362) nor in the determination of what should constitute the support of a beneficiary. (Can. 1410, 1415.) The Bishop assigns the proper pension to a parish priest who has resigned or been removed, with the advice of the synodal examiners or parish priest consultors who took part in the proceedings that resulted into resignation or removal. (Can. 2154, 2161.) It is for the Bishops of the province in council or in an ordinary meeting to regulate what pertains to taxes or fees paid on the occasion of the administration of Sacraments or sacramentals and of various acts of voluntary jurisdiction. (Can. 1507.) The Holy See alone can permit the giving of secular benefices to Religious (Can. 1442) or the levying of taxes above those which the common law allows, and it does so on whatever conditions it chooses.

213. 2. *During the Vacancy of the See.* When the see becomes vacant the administration of the diocese devolves upon the chapter or board of consultors, who must appoint an Administrator. The Consistorial Congregation declared, Feb. 22, 1919, that this law held also in the United States and had abrogated the contrary disposition of the third Plenary Council of Baltimore on the subject; that the consultors appointed the Administrator except only

when they were less than five, in which case for the following three years the Archbishop or senior Bishop of the province would make the appointment and have it ratified by the Apostolic Delegate. (A. A. S., 1919, p. 75; A. E. R., May, 1919, p. 543.) Shortly after, this rule was extended to the diocese of Canada and Newfoundland. (Consist. Cong. May 8, 1919; A. A. S., p. 233.)

Chapter VII

Episcopal See Impeded or Vacant and the Vicar Capitular

(Can. 429-444.)

(Bouix, De Capitulis, Pars 5a; Wernz, n. 794; Thomassin, P. I, L. III, c. vii, n. 13, 14; c. x, n. 10-13; Blat, p. 398.)

I. ANCIENT DISCIPLINE

214. 1. During the first centuries, in the absence of a Bishop or after his death, his clergy or presbyterium governed the diocese, as we see by the letters of St. Ignatius Martyr in the second century and of St. Cyprian in the third. In the fourth, Metropolitans commence to send their representatives, called *Intercessores, Interventores, Visitatores,* to assist the local clergy or correct occasional disorders. At times it is the more influential clerics of the church who take all the authority to themselves.

As the cathedral chapters grow in importance, chiefly from the eighth century on, they obtain a larger share in the government of the diocese; by the end of the tenth century they assert their exclusive right of administering it during the vacancy, and decretal law soon sanctions their claims.

2. Outside of the cases of vacancy proper, when a Bishop can not discharge his functions because of age, infirmity, or some other similar reason, ancient canons do not consider the see as vacant; they direct priests and neighboring Bishops to assist the infirm Prelate. (6. 4, Causa 7, q. 1.) Boniface VIII

authorized such Bishops to take one or two coadjutors, and if they were not able thus to provide for themselves, as when they had lost the use of their faculties, the chapters had authority to do so for them. (C. un., III, 5, in 6°.) But the same Pope decreed that if a Bishop became a captive in the hands of pagans or schismatics the government of the diocese would devolve on the chapter as in the case of death. Some canonists assimilated afterwards exile, deportation, or imprisonment to captivity, and this led chapters acting on this interpretation of Boniface's canon to hasty appointments of Vicars Capitulars, which drew the protests of Bishops and even of the Holy See. In 1683 the Congregation of Council, referring to the action of an Irish chapter, declared that the Bishop had not lost his jurisdiction by falling into the hands of heretics, and that consequently the chapter had no authority to rule the diocese. In 1837 the Archbishop of Cologne, Clement August, having been imprisoned by the Prussian government, the chapter elected a Vicar Capitular, but Pope Gregory XVI pronounced the election invalid. The Congregation of Bishops and Regulars reproved several chapters of Sicily for similar infringements on the rights of Bishops. (May 3, 1862.) In more recent times, when the revolution in Mexico had driven Bishops out of the country or kept them out of their dioceses or imprisoned them or obliged them to flee or hide themselves, some chapters took upon themselves to elect Vicars Capitular, unjustly taking away from the Vicar-General of the Bishop all ordinary power. The Consistorial Congregation, consulted on this manner of proceeding, declared in the name of Pope Benedict XV that there was in those cases no legitimate cause for electing Vicars Capitulars and that any such elec-

tions were null and void. Bishops retained full power and they could exercise it through their Vicar-General or any other priest delegated by them. (Dec. 6, 1914; A. A. S., p. 698; Canoniste Contemporain, 1914, p. 729.)

The Fathers of the Vatican Council had prepared a scheme declaring that a diocese did not become vacant by the captivity, deportation, or exile of the Bishop but only impeded, as now decreed in the Code. (Collectio Lacensis, vol. vii, p. 651, c; 654, b.)

II. EPISCOPAL SEE IMPEDED. (Can. 429.)

215. An episcopal see becomes impeded in the legal sense of the term when its incumbent, whilst retaining the title, can not discharge the functions of the office, owing to either a physical or a canonical obstacle.

1. *Physical Impediment.* (*a*) Nature. A Bishop becomes physically impeded when one of the following causes prevents him from ruling his diocese and communicating even by letter with his subjects: captivity, whether in the hands of pagans, heretics, or schismatics, of external enemies or internal foes and fellow citizens; relegation or exclusion from the diocese, exile, inability, whether due to bodily or mental infirmity, culpable or inculpable.

(*b*) Effect. In all these cases, unless the Holy See had made some provision to the contrary, the episcopal power really remains in the hands of the Bishop and must be exercised by his Vicar-General or by any other ecclesiastic delegated by him. The Bishop may even for a grave cause appoint several delegates, not to govern the diocese together, but to succeed one another if circumstances demand it;

thus if one would die or be imprisoned the other would take his place.

Only in one case does the administration of an impeded see pass to the chapter and call for the election of a Vicar Capitular; it is when the Bishop has left neither a Vicar-General nor any delegate to represent him or when these representatives of the Bishop have become impeded like himself. In any case the one who assumes the authority must at once notify the Pope.

216. 2. *Canonical Impediments.* (*a*) Nature. By canonical law a Bishop becomes unable to rule his diocese and exercise jurisdiction if he falls under excommunication, interdict, or suspension.

(*b*) Effect. The administration of the diocese does not remain in the hands of the Bishop nor of his Vicar-General; yet neither does it pass to the chapter, but the Metropolitan must have recourse without delay to the Holy See, which will make the necessary provisions.

Should the Metropolitan himself incur the censure the Holy See should be notified by the senior Bishop of the province, that is, the one first promoted to one of the suffragan sees. (Can. 284, 292.)

In the case of Bishops not subject to any Metropolitan, of Abbots or Prelates Nullius and of Archbishops without suffragans who would fall under censure, the report to the Holy See should be made by the Metropolitan whom they have chosen once for all as the one at whose Provincial Council they must assist. (Can. 285.)

III. EPISCOPAL SEE VACANT. (Can. 430, 431.)

217. 1. *Nature and Causes of Vacancy.* An episcopal see becomes vacant when the incumbent ceases to hold the title or to be really its Bishop.

This may occur by death, by resignation duly accepted by the Sovereign Pontiff, by legitimate transfer and by privation of office pronounced in legal form. (Can. 184-195.)

2. *Effects.* (*a*) All appointments to ecclesiastical offices or benefices made by a member of the former administration after the see has become vacant are null and void, but by concession of the law other official acts performed by the Vicar-General before he receives sure, even though not official, notice of the Bishop's death, or by the Bishop himself or his Vicar-General before they have truly reliable information of the resignation and its acceptance, of the transfer or privation, are valid. Notification of the privation of office must come to the Bishop from the superior who pronounced it. (Can. 192.)

(*b*) Vacancy by transfer is not fully complete till the transferred Prelate takes possession of his new see, which he should do within four months from the day he was duly informed of his transfer. (Can. 333, 334.)

Meanwhile, that is, till he takes possession: (i) He fills in his former diocese the office of Vicar Capitular and has all the powers and obligations that go with it; the powers of his Vicar-General cease when he ceases to be the Bishop of the place.

(ii) He retains all the honorary privileges of residential Bishops.

(iii) He has a right to all the episcopal revenues, on the principle that a beneficiary transferred from one benefice to another enjoys the fruits of the former till he takes possession of the latter. (Can. 194 § 2.)

218. (*c*) Regularly as soon as an episcopal see becomes vacant the government of the diocese devolves on the chapter or on the diocesan consultors. This rule, however, admits of exceptions.

If the diocese had already an Apostolic Administrator he continues in office till the new Bishop takes possession.

In some places the Holy See makes special provisions for the case of vacancy. In missionary countries Vicars or Prefects Apostolic appoint the Administrator who should rule the prefecture or vicariate after their death. (Can. 309.) The same or a similar discipline had prevailed, for example, in Canada and the United States, for a long time after the organization of a regular hierarchy. In the Philippines, by a Brief of Pope Leo XIII, Sept. 17, 1902 (A. S. S., vol. 35, p. 271), when one of the suffragan sees that has no cathedral chapter becomes vacant the Metropolitan, or in his default the nearest Bishop, assumes its administration. In other places the Metropolitans appoint Administrators. All these, whatever be the form of their appointment, have the same powers and obligations as Vicars Capitular and are liable to the same punishments should they prove unfaithful stewards.

In the United States the second Plenary Council of Baltimore (N. 96) decreed that every Bishop should before his death designate a priest who would exercise authority after him. Should he have failed to do so or should the see become vacant otherwise than by death, the Metropolitan, or in his default the senior suffragan, would appoint the Administrator. The third Plenary Council modified the mode of choosing Bishops and introduced diocesan consultors as a necessary part of the episcopal curia, but did not change the manner of designating the Administrators of vacant sees.

After the publication of the Code the question arose whether these special provisions continued in force or whether the appointment of Administrators

belonged now to diocesan consultors in this country as by common law. Interrogated on this subject, the Commission of Interpretion answered, as said before, that Bishops in the United States could no longer in any case appoint an Administrator to govern the diocese after their death and that, in accordance with the prescriptions of the Code this power belonged to the diocesan consultors, but that if special circumstances did not permit the carrying out the law in all places the Consistorial Congregation would give special instructions as to the manner of meeting these temporary conditions. The Congregation decided that where diocesan consultors were at least five or six, they would appoint the Administrator, otherwise the Metropolitan or senior Bishop would make the appointment. This was to hold for three years. (Consist. Cong., Feb. 22, 1919; Periodica, May 25, 1921, p. 50; A. A. S., 1 Mart. 1919, 11, 75.)

IV. VICAR CAPITULAR OR ADMINISTRATOR. (Can. 432-444.)

219. The enactments of this section apply equally to Vicars Capitular and to Administrators appointed by Diocesan Consultors.

1. *Appointment.* (*a*) Necessity. Before the Council of Trent, during the vacancy of the see, chapters might administer the diocese as a body or depute one or several of their number with full or limited authority to administer it in their name. Experience having shown the inconveniences of this system, the Council of Trent decreed that chapters should not retain the government of the diocese for more than eight days but commit it to a vicar. The Code maintains these provisions.

Within eight days from the moment they received trustworthy notice of the vacancy of the see, the

cathedral chapter or Diocesan Consultors must depute a vicar or administrator to rule the diocese in their place. They may exercise episcopal authority for a few days, but then it must pass to one who exercises it not in their name but in their place.

Should the chapter or consultors, for whatever reason, fail to comply with this law within the allotted time, the right to make the appointment devolves for this time on the Metropolitan, or if the metropolitan see is vacant on the senior suffragan, that is, on the Bishop who is the senior in the province, not by age or ordination but by promotion to the suffragan see. (Can. 284-292.) The metropolitan chapter no longer has authority to supply the negligence of those of suffragan sees.

When a diocese subject immediately to the Holy See or an Abbey or Prelacy Nullius becomes vacant and the chapter fails to designate a vicar capitular within the prescribed time, the appointment devolves also on the Metropolitan chosen once for all as superior in such matters (Can. 285), unless in the case of an Abbey or Religious Prelacy the respective constitutions have some special provision for such emergencies.

The chapter must as soon as possible inform the Holy See of the death of the Bishop and the Vicar Capitular send news of his election.

(*b*) Mode of Procedure. (i) The present law explicitly forbids the appointment of more than one Vicar Capitular or Administrator, and this under pain of nullity of the act. It reproves contrary customs which had existed in some places with the implicit, if not permission, at least toleration, of the legislator.

(ii) This appointment must be a capitular or collegiate act and carried out in accordance with the

general rules laid down for elections and postulations (Can. 160-182), besides the special rules which concern it particularly. This supposes a formal meeting of the canons or diocesan consultors, convocation of all the members entitled to a vote and a decision taken in due form. As this is not an election proper, but rather a deputation, the special procedure prescribed for elections is not strictly necessary here.

On the other hand, whilst for an ordinary election a relative majority suffices in the third ballot, here the law expressly requires the absolute majority of the votes cast, not counting the invalid ones. (Can. 169, 170.)

220. 2. *Qualifications of the Vicar or Administrator.* (Can. 434.) Some affect the validity of the act, others the lawfulness only.

(*a*) Like all those who have the care of souls either in the internal or external forum, under the present law (Can. 168), the Vicar Capitular must be in priestly orders, and like the Vicar-General he must have completed his thirtieth year. The clerical state and twenty-five years of age do not suffice now, as under the former discipline.

He must not have been presented, nominated, or elected to the vacant see; a Bishop-elect should not interfere with the administration of the diocese till he has taken canonical possession. Pius IX punished the violation of this law with excommunication reserved to the Holy See. (Const. *Romanus Pontifex,* Aug. 28, 1873.) If a duly appointed Vicar Capitular is afterwards elected to the see he may continue in office.

Neglect of these conditions would render the appointment null and void and the acts of the Vicar Capitular invalid. The right of appointment would devolve for that time upon the Metropolitan or senior

Bishop who should not, however, exercise it till he has ascertained the nullity of the previous transaction.

(*b*) The Vicar Capitular should be a doctor or licentiate in theology or in canon law or at least well versed in these sciences, as required for the proper discharge of his duties. He should possess, besides, integrity of life, piety, sound doctrine and prudence. The legislator does not require these qualities in the candidate as a condition for the validity of the appointment and he could not determine the exact degree in which they ought to exist for its lawfulness; neither does he state or imply that the choice should fall preferably on a member of the chapter or board of consultors rather than, for example, on the Vicar-General of the deceased Bishop.

221. 3. *Powers of the Vicar Capitular or Administrator.* (Can. 435-438.) The episcopal power of jurisdiction, not of order, which had passed to the chapter or consultors when the see became vacant, passes in turn by disposition of the law to the Vicar or Administrator as soon as he is legitimately designated.

(*a*) Nature. His power is ordinary not delegated; he can delegate it in the same manner and on the same conditions as any local Ordinary.

(*b*) Extent. It includes all the Bishop's ordinary jurisdiction, voluntary and contentious, in both spiritual and temporal matters that are not expressly excepted by law. The Administrator may, therefore, enact laws for the diocese, dispense from statutes as the successor of the Bishop not his inferior, administer justice, punish criminals, inflict censures, grant jurisdiction for the tribunal of penance, ab-

solve from sins reserved to the Bishop, and give dispensations.

The Code explicitly declares that the chapter and afterwards the Vicar or Administrator can execute Apostolic Rescripts committed to the Bishop except for an express provision to the contrary, that they enjoy all the general or habitual faculties possessed by the Bishop, excepting only those of a personal character. (Can. 368, § 2; 199 § 2.) They can likewise grant to any Bishop the exercise of pontificals in the diocese and if the Vicar or Administrator has the episcopal character he may pontificate himself, but always without using the throne and canopy.

In various parts of the Code we find that the Vicar Capitular or Administrator has the right to assist at Plenary and Provincial Councils (Can. 222, § 1; 286, § 1), to appoint a consultor in place of one who has gone out of office, with the consent of the other consultors (Can. 426, § 5), to remove the *vicarii œconomi, substituti, adjutores and cooperatores* (Can. 472), to confer certain benefices (Can. 1432 § 2), to give incardination, excardination, and dimissorial letters after one year of vacancy and even during the first year in certain cases of necessity (Can. 113, 958, 959), to appoint *vicarii parochiales* and to give the canonical institution to candidates elected or presented to a vacant parish (Can. 455, § 2), to remove the chancellor or notaries with the consent of the chapter or consultors. (Can. 373 § 3.)

222. (*c*) Limitations. Because the office of the Vicar Capitular is a transitory one, whilst he must have all the powers necessary for the good administration of the diocese, the ancient law still holds that prohibits any important change during the vacancy of the see.

For the same reason nothing should be done that may prove detrimental to the interests of the diocese or the rights of the Bishop, such as, for example, alienations of temporal property, transactions affecting the revenues of the benefice, etc.

In particular the Code explicitly forbids the Vicar Capitular, any member of the chapter, and outsiders, lay or cleric, to remove, destroy, conceal, or adulterate, personally or through others, any document belonging to the episcopal curia (Can. 435 § 3), and this under pain of excommunication reserved to the Holy See. (Can. 2405.)

The following powers are also excepted from the general concession made by law to the Vicar-Capitular or Administrator. He may not: convoke diocesan Synods (Can. 357 § 1), create honorary canons (Can. 406, § 1), give permanency to removable parishes (Can. 454, § 3), establish Religious Congregations (Can. 491, § 1), erect pious associations or give his consent for the same (Can. 686, § 4), reserve cases to himself (Can. 893, § 1), allow poor churches to demand a compensation for the privilege of saying Mass (Can. 1303, § 3), unite parishes. (Can. 1423, § 1), permit permutation of benfices (Can. 1487 § 1), remove the *promotor justitiae* or *defensor vinculi.* (Can. 1590.)

223. (*d*) Independence. (Can. 437.) The Vicar Capitular or Administrator does not in the exercise of his functions depend on the chapter or consultors in such a way that they could restrict his powers or reserve some to themselves. He does not really receive his authority from them, but from the law itself, once they had deputed him. He is not their delegate or even vicar, although called capitular because chosen by the chapter. Some ancient canonists had interpreted differently the decree of

the Council of Trent, but Roman Congregations and Pius IX himself in the Const. *Romanus Pontifex* rejected their opinions and affirmed the doctrine now asserted again by the Code. Whatever restrictions chapters might attempt to put on the authority of the Vicar, whether as to time, persons, or matters, would remain without effect.

(*e*) Beginning. (Can. 438.) After making the profession of faith prescribed in canons 1406-1408, the Vicar Capitular obtains at once his jurisdiction; he does not need confirmation from anyone nor does he have to take canonical possession of his office or comply with any further conditions.

224. 4. *Honorary and Useful Rights.* (Can. 439, 441.) (*a*) The Vicar Capitular has precedence, like the Vicar-General, over all ecclesiastics in the diocese, Bishops only excepted when he does not have the episcopal character himself. He is entitled to all the privileges and insignia of a titular Prothonotary Apostolic while in office, or to those of a titular Bishop if he has received episcopal consecration.

(*b*) He has a right to a decent support as determined by the Provincial Council or legitimate custom. Unless otherwise provided by law or by custom, this is taken out of the revenues that regularly belong to the Bishop.

In some cases Roman Congregations have assigned to the Vicar Capitular a salary equal to that of the Vicar-General or to one-fourth of the Bishop's income.

5. *Obligations.* (Can. 440, 444.) The Vicar Capitular, as ruler of the diocese and entrusted with the care of its spiritual and temporal interests, has the same obligations as the Bishop, with the differences specified by law when treating of the various

episcopal duties or implied in the transitory character of his office. Here the Code explicitly mentions only the following:

(*a*) He is bound, like the Bishop, to reside in the diocese and to apply the Mass for the people.

(*b*) He must give an account of his administration to the new Bishop and particularly an account of all the papers and documents concerning the Church that may have come into his hands.

225. 6. *Cessation of Office.* (Can. 443.) Ordinarily the Vicar Capitular or Administrator goes out of office when the vacancy comes to an end, that is, when the new Bishop takes canonical possession of his see. His office ceases also by removal, resignation, or death.

The Holy See alone can remove a Vicar Capitular or Administrator, not the chapter or consultors, who have no jurisdiction over him, nor the Metropolitan, even if he had made the appointment himself, because the law does not grant him that power.

The resignation would have to be drawn up in authentic form and presented to the chapter, but it does not need acceptance to become effective.

In these cases of removal, resignation, or death the chapter would depute another Vicar Capitular in the same manner and on the same conditions as the first.

V. ŒCONOMUS OR PROCURATOR.
(Can. 433, 434, 441-444.)

226. The Council of Trent prescribed, for the time of vacancy, the appointment, together with that of the Vicar Capitular, of an Œconomus or Procurator for the administration of the temporal property of the diocese, at least in places where the chapter has charge of the diocesan revenues. (Sess. XXIV,

de Ref., c. 16.) The Code maintains this provision with the same restriction.

In the United States, and in other countries also, the Diocesan Consultors have little to do with the temporal administration and the collecting of diocesan revenues, consequently the obligation of appointing the Œconomus does not exist. In any case, the law permits the appointment of the same person as Vicar Capitular and Œconomus, so that he may have both the temporal and the spiritual administration.

Where he exists, the Œconomus does not constitute an independent authority, but he administers the temporal affairs and revenues of the diocese under the control and supervision of the Vicar Capitular. He is appointed, has a right to a decent support, goes out of office and must render an account of his administration, in the same manner as the Vicar Capitular. The law admits of several Œconomi and demands explicitly for the office only these two qualifications: fidelity and diligence.

VI. DIOCESAN REVENUES DURING THE VACANCY. (Can. 441.)

227. Those revenues which are strictly diocesan, that is, belong to the diocese but do not go to the Bishop for his support or as the fruit of his benefice, continue during the vacancy to be applied in the usual manner.

The episcopal revenues, which under ordinary circumstances the Bishop can use for his personal needs or wishes, serve, during the vacancy, towards the support of the Vicar Capitular or Administrator and Œconomus, unless particular statutes or custom provide differently. What remains, if anything, after meeting these expenses must be saved and handed

over to the new Bishop when he comes. It will not, however, become his personal property, but he must spend it for the diocese, as it represents the fruits of the benefice for the time when he did not as yet discharge the duties of the office.

VII. ACCOUNTS TO BE RENDERED AT THE END OF THE VACANCY. (Can. 444.)

228. After taking possession of his see the new Bishop must ask the chapter, Vicar Capitular, Œconomus, and other officials who received an appointment during the vacancy to render him an account of their office, jurisdiction, administration, and charges whatsoever. This applies also to those who might have resigned before the end of the vacancy, to members of the chapter and dignitaries.

Should he discover any delinquencies he would have to punish the offenders, even though they had already given an account of their administration to the chapter or its deputies and been absolved or acquitted by them.

The legislator specifies that the new Bishop must ask particularly for an account of the documents or writings of any kind belonging to the Church, that is, to the archives of the diocese or of particular churches, which these officials might have had in their hands during the vacancy.

Chapter VIII

Vicars Forane or Rural Deans

(Can. 445-450.)

(Benedict XIV, De Synodo Dioecesana, L. III, c. iii, n. 5-10; Ferraris, Vicarii Foranei; Wernz, II, n. 818; Thomassin, P. I, L. II, c. 1-6; Maroto, Institutiones Juris Canonici, II, n. 761; Blat, l. c., p. 413; Cocchi, l. c., n. 324

After treating of the assistants of the Bishop in the general administration of the diocese, the Code passes to those who partake of his authority over a portion of it, *viz.*, the Vicars Forane and the parish clergy.

I. ORIGIN OF VICARS FORANE

229. 1. As soon as Christian communities multiplied outside of large cities and grew important enough to have a clergy of their own, it seemed necessary to place over them superiors who would exercise more immediate supervision than Bishops residing in the city could do. The powers and functions of these representatives of episcopal authority in rural districts have varied with times and places and they have borne different names; the principal ones are the Chorepiscopi, Rural Archpriests and Archdeacons, Rural Deans, and Vicars Forane.

(*a*) Chorepiscopi. History has preserved the name of a Chorepiscopus or country Bishop of the second century, Zoticus of Cumane in Phrygia; the office may have existed even before him. In the beginning they probably possessed full episcopal power of order and jurisdiction, but soon it proved inex-

pedient to have independent Bishops in such small places; their churches were attached to that of the nearest city and they became as the vicars of the city Bishop, who possessed greater prestige and influence. According to St. Gregory of Nazianz, St. Basil had fifty Chorepiscopi under him.

The change had taken place before the end of the third century. Whether in their reduced condition Chorepiscopi continued to receive episcopal consecration, the texts do not prove with absolute certainty. Their position remained, however, one of honor, although subordinate; they presided over the country clergy, inquired into their behavior, and reported to the city Bishop, provided fit persons for the service of the Church, conferred minor orders, administered confirmation, and delivered dimissory or irenical letters; they had the privilege of sitting and voting in Councils and of officiating in the city church in presence of the Bishop and his clergy. But they must have abused their powers and put forth claims which appeared excessive, for early in the fourth century Councils commence to place further restrictions on them (Ancyra, 314, Can. 13; Antioch, 341, Can. 10), and a little later they implicitly decree their suppression. The Councils of Sardica (343, Can. 6) and of Laodicea (343-380, Can. 57) ordain that in future no Bishop should be appointed in country places but only *periodeutai,* or itinerant priests. The second Council of Nicea in 787 still mentions the Chorepiscopi, but after this they no longer appear in official documents of the Eastern Church.

In the West we find some references to small rural dioceses established in Italy, Africa, or Gaul and suppressed by Councils of the fourth century, but without leaving them in charge of country Bishops.

The Council of Riez in 439 reduced Armentarius, Bishop of Embrun, to the rank of Chorepiscopus, and an inscription of the fifth century gives that title to a certain Eugraphus of Salone in Dalmatia, but with these and possibly a few other exceptions, Chorepiscopi remained practically unknown in the West till the seventh century, when they commence to appear first in Gaul, then in Belgium, Germany, and other countries, as *episcopi in metis, episcopi villani, vicani,* because they reside outside of cities. In the following century their number and importance increase considerably through the action of the Popes, the Carolingian princes and St. Boniface, who use them to strengthen the discipline and ecclesiastical organization chiefly in the newly evangelized regions. They act as the vicars of Bishops in country places, administer confirmation and penance, consecrate churches, confer minor or even major orders, and at times govern the whole diocese in the absence of the Ordinary. But here again they soon come into conflict with Bishops, who gradually take away from them all their privileges. By the end of the eleventh century very few of them remained. The Council of Kena in Ireland, 1152, forbids to replace them. (Leclercq, Dictionnaire d'Archéologie, Chorévêque; Histoire des Conciles, T. II, p. 1197; Smith, Dictionary of Christian Antiquities, Chorepiscopus; Bingham, Antiquities, B. II, c. xiv; F. Mourret, Histoire de l'Eglise, vol. I, p. 379.)

230. (*b*) Rural Archpriests. As the priest who ranked first among the clergy of the episcopal church, either by seniority or appointment, received the name of Archpriest, so in the country, in the fifth and sixth centuries, when Christian communities had multiplied, we find this title given to the priest who had charge of the more important churches estab-

lished in the *vici* or larger centres. The faithful who lived in the neighboring villages or *villae* came to hear Mass and receive the Sacraments in this church, the *ecclesia rústicana* or *dioecesana.* Even when chapels had been erected in the hamlets or on the estates of the great landowners, only the ordinary services and instructions in Christian doctrine were at first permitted in these lesser churches or *tituli minores;* for the principal Mass, at least on great feast days, for baptisms and funerals, all had to repair to the mother church, the *ecclesia baptismalis, titulus major.* The rural Archpriest stood at the head of the clergy attached to it and to the chapels of the neighboring villages and *villae;* he watched over them and reported disorders to the Bishop or his Archdeacon for punishment, which he had no power to inflict himself. He exercised the main liturgical functions and had the administration of the temporal property. In reality, however, he does not seem to have possessed any special jurisdiction strictly so called, and the territory over which he presided constituted only one parish, at least in the beginning and till the *tituli minores* included in it acquired independence. This did not take place much before the eighth century. (Catholic Encyclopedia, Archpriest; J. Faure, L'Archiprêtre des Origines au Droit Décrétalien, Grenoble, 1911.)

231. (*c*) Rural Deans. Another official appears in the ninth century, the *decanus* or Rural Dean, often associated, at times identified with, but habitually distinguished from, the Archpriest. He probably owes his origin to the action of Bishops in their effort towards organization, which marked this period and received the support and encouragement of the Carolingian kings. The missionary movement initiated by the Irish monks had brought about the con-

version of rural populations and multiplied religious centers in country places. Many of the churches or chapels erected in villages or *villae* had obtained full parochial rights and became independent of the Archpriest; in order not to leave them without some local supervision Bishops decided to divide their dioceses into districts, each including several parishes and placed under the special care of a representative of their authority, whom they generally called Dean, the name given in Benedictine monasteries to superiors who had charge of a certain number of monks and in the communities of clerics who adopted the canonical rule to the one who presided over them.

The *Decania* often corresponded to the former plebs or territory ruled over by the Archpriest, but not always; often also, no doubt, the *vicus* became the center of the deanery and the Archpriest received the title of Dean or the powers connected with the new office without changing his name.

The Dean made every year the visitation of his district and reported to the Bishop on the canonical status of the clergy, the manner in which they fulfilled their duties and administered the Sacraments; on their mode of life particularly in regard to the law of celibacy; on the condition of ecclesiastical property, the sacred vessels and vestments, the church and the school. He administered solemn penance, presented the candidates to the Bishop for ordination, exercised judicial power and could inflict penalties, even excommunication according to some authorities. (Thomassin, l. c., c. 6, n. 7; Council of Pont Audemer, 1279.) He held every month a general meeting of his clergy for the discussion of matters pertaining to their office and presided also at other gatherings, at funerals and similar occasions. (Faure, l. c., p. 124, 132; Hincmar, Capitula Synodica, in Migne,

P. L., vol. 125, col. 773, ff.) The powers of rural Deans, delegated at first, became ordinary and permanent and they went on increasing in the course of the eleventh and twelfth centuries till they proved a serious hindrance to the exercise of the episcopal authority. Hence the necessity of curtailing them, as shown by decrees of particular Councils. (Laval, 1242, Can. 4; Angers, 1282; Bayeux, 1300.) The Fathers of Trent, confirming previous local legislation, took from Rural Deans the right of visitation and all jurisdiction in matrimonial or judicial causes. (Sess. XXIV, de Ref., cc. 3, 20; Sess. XXV, c. 14.) By this time they had lost most of their privileges and the appointment of Vicars Forane practically completed the ruin of their ancient prestige.

232. (*d*) Rural Archdeacons. In some large dioceses the Bishops felt the need of placing the more remote portions of the territory confided to them under the care of special Archdeacons distinct from the one who assisted him in the general work of administration. In others the whole diocese was divided into a certain number of sections, including each several deaneries and having an Archdeacon to watch over it. Rural, as distinct from urban, Archdeacons existed perhaps in some places as early as the sixth (Orleans, 541, Can. 26), certainly in the eighth century. They enjoyed great power in the eleventh and twelfth centuries after the suppression of the Chorepiscopi, whose functions they inherited in part at least; but they too soon put forward claims and asserted an independence which obliged Bishops to deprive them gradually of their prerogatives by transferring them to other more docile officials.

233. (*e*) Vicars Forane. The Decretals contain a few references to Officials Forane who exercised

contentious jurisdiction in rural districts. (1, I, 16, in Sexto; 2, I, 2, in Clem.) The first certain and detailed account of the institution and attributions of Vicars Forane occurs in the Provincial Council of Milan in 1565, XXIX. St. Charles commits to them most of the functions formerly entrusted to Rural Deans, but they receive only delegated jurisdiction revocable at will. That complete dependence on the Bishop was meant to render them more vigilant and keep them more docile. (Thomassin, l. c., c. vi.) Several Particular Councils soon adopted the Milanese discipline, and thus in many dioceses Vicars Forane took the place of Rural Deans. (Aix, 1585, Aquileia, 1596.) The latter retained of their former prerogatives little more than an honorary title, except where the Bishop granted them powers similar to those of Vicars Forane, with whom they are for this reason often confounded.

The common law did not in modern times prescribe the appointment of Vicars Forane but Particular Synods often did or at least they recommended it. The first Westminster Council decrees that the Bishop may appoint Vicars Forane or Rural Deans with a written delegation of those faculties which he judges expedient to commit to them. The first Maynooth Synod orders Rural Deans to send to the Bishop, at least once a year and oftener if necessary, a relation of the state of religion and behavior of the clergy of their deanery. The second and third Plenary Councils of Baltimore recommend as very useful for the maintenance of ecclesiastical discipline the appointment and multiplication of Rural Deans in large Dioceses. Their office would be to preside at conferences of the clergy, to watch over the ecclesiastics of their district, and several times a year report to the Bishop occurrences of some importance.

II. APPOINTMENT OF VICARS FORANE. (Can. 445-446.)

234. 1. The present law has rendered obligatory the division of dioceses into districts composed of several parishes and called Vicariates Forane, Deaneries, or *Archipresbyteratus*. It gives the name of Vicars Forane to the priests set over these districts. The division once made the Bishop retains the power he possessed before of suppressing some of these districts, subdividing or uniting them.

2. The Bishop appoints Vicars Forane freely. The Code does not determine any special mode of proceeding in this matter nor require in the candidate any other qualification than that he be a priest, worthy of the position, in the estimation of the Ordinary, and preferably, although not necessarily, one of the pastors of the district.

3. A Vicar Forane is revocable at will, which implies that the Bishop can revoke him for any reasonable cause, in keeping with the principles of prudence and justice, without need of trial. He may lose his office also by transfer to a parish outside the district or by resignation.

III. OFFICE AND FUNCTIONS OF VICARS FORANE. (Can. 447.)

235. 1. By common law it is the right and duty of a Vicar Forane: (*a*) To watch over the territory placed under his care and see particularly whether the clergy of his district lead a life conformable to the prescriptions of the sacred canons; whether they discharge their duties faithfully, with regard notably to the law on residence, the preaching of the word of God, the catechetical instruction of children and adults, the obligation of attending the sick; whether

the orders issued by the Bishop on the occasion of the visitation are duly carried out; whether sufficient care is taken to have the proper matter for the Holy Sacrifice; whether decorum and cleanliness are maintained in churches and sacristies, especially in what pertains to the custody of the Blessed Sacrament and the celebration of Mass; whether rubrics are observed in sacred ceremonies, ecclesiastical property carefully administered, obligations attached to it, particularly concerning Masses, faithfully discharged, parochial books accurately kept and preserved;

(*b*) To visit the parishes of his district at stated times, as determined by the Bishop, in order to obtain a personal and exact knowledge of those matters which are committed to his vigilance. Particular Synods ordinarily prescribe a yearly visitation, as the Vicar presents his report to the Bishop once a year.

(*c*) To attend to the parish priests of the district in case of sickness. As soon as the Vicar Forane hears of the serious illness of one of them he must take care not to leave him without the proper material and spiritual assistance nor without decent funeral should he die. He must watch, moreover, that during the sickness or after the death of the parish priest no books, documents, sacred furniture, or anything else belonging to the church, be lost in whatever manner or carried away.

2. Particular law, provincial or diocesan Synods, episcopal decrees usually define more in detail the rights and duties of the Vicar Forane, extending the field of his activity and granting him further faculties. The Code demands that power be granted him to absolve from cases reserved to the Bishop with permission to subdelegate it to confessors of his district under certain conditions. (Can. 899.)

The power he thus receives from the Bishop is delegated and can not be subdelegated without authorization; that which common law now attaches to his office may be considered as ordinary, but it does not imply jurisdiction strictly so called, pertaining rather to paternal administration.

IV. OBLIGATIONS OF VICARS FORANE.
(Can. 448-449.)

236. 1. *Clerical Conferences.* The Vicar Forane is responsible for the regular holding of the clerical conferences prescribed by the Code. (Can. 131.) On the day designated by the Bishop he must call the priests of his vicariate to this meeting and, as a rule, preside at it personally. Should, however, several conferences be held in various places of his district, as may seem necessary in large dioceses, he would not have to attend every one of them, even though he could, but he may appoint a substitute. He must, however, see that those also at which he does not assist are conducted according to law.

2. *Residence.* Ordinarily the Vicar Forane has charge of a parish, in which he must reside. If he had no parish he would have to reside in the district or not far from it, in a place approved by the Bishop, so that he may fulfill his duty of vigilance, etc.

3. *Report to the Bishop.* At least once a year he must render an account of his vicariate to the Ordinary of the place, pointing out the good done during the year and the progress made in regard, for example, to the frequentation of the Sacraments, the development of schools and sodalities, etc. He must, however, also note the evils that have crept in and the scandals given, if any, together with the means used to repair the harm, making suggestions as to

what seems the most effective way of eradicating these evils.

V. PRIVILEGES. (Can. 450.)

237. 1. The Vicar Forane may and should have a special seal for the vicariate.

2. He enjoys precedence over all pastors and other priests of his district, whatever may be their titles and dignity. This would hold good even outside of the district in gatherings of ecclesiastics belonging exclusively to it. (Blat, p. 416; Monitore Ecclesiastico, 1920, p. 26.)

3. He is entitled to a seat in the diocesan Synod. (Can. 358, § 1, n. 4.)

4. In urgent cases he may grant to administrators of churches the necessary permission to institute or contest a lawsuit in the name of the church. (Can. 1526.)

Under the present law the Vicar Forane may, therefore, be considered as, in some sense, constituted in dignity, since a right of precedence goes with the office, as also some authority, and ordinarily a certain degree of jurisdiction, although delegated and limited.

Chapter IX

Pastors

(Can. 451-470.)

(Bouix, De Parochis; Wernz, II, n. 820; Blat, l, c., p. 416, Cocchi, l. c., n., 331; Vermeersch, l. c., n. 395; Raia, De Parochis et de Vicariis Paraecialibus, Rome, Desclées, 1921; Thomassin, l. c., P. I. L. II, c. 21, 27 Maroto l. c., n. 762; Catholic Encyclopedia, Parish, Pastor Gasquet, Parish Life in Mediæval England, Benziger, New York, 1898; Imbart de la Tour, Les Paroisses Rurales du IVe au VIe Siécle, Paris, 1900; Lesêtre, La Paroisse, Paris, 1908; Dictionnaire de Théologie, Curé; Bingham, l. c., Book IX, Ch. VIII; Smith, Dictionary of Christian Antiquities, Parish; E. L. Cutts, Parish Priests and Their People in the Middle Ages in England, London, 1898.)

238. Parish priests represent, in Church organization, the last degree in the hierarchy of ordinary jurisdiction, although they do not belong to this hierarchy except in an imperfect sense, as their power pertains to the internal forum.

I. ORIGIN OF THE OFFICE OF PARISH PRIESTS

1. On the occasion of the controversies between the secular and regular clergy in the thirteenth century, some theologians and doctors of the Paris University advanced the theory of the divine institution of parish priests as contrasted with the human origin of Religious Orders, representing the former as the successors of the seventy-two disciples and identifying them with the presbyters often mentioned in the Acts or Epistles. The Jansenists in the seventeenth and eighteenth centuries went still farther, and in the Synod of Pistoia, 1786, under Bishop

Ricci, they claimed for parish priests the right of sitting in Councils as judges of the faith and of exercising legislative, judicial, and coercive jurisdiction. Pope Pius VI formally condemned these errors in the Const. *Autorem Fidei* (Aug. 28, 1794), and although they had a few advocates in France and Germany during the nineteenth century, no one would now defend them any longer. (Bouix, l. c., Pars Prima.) They are without any foundation either in Scripture or in tradition.

239. 2. History shows the relatively late and slow development of the parochial system. For several centuries the distinction between diocese and parish did not exist; originally the term *paraecia* designated the territory presided over by a Bishop (Ancyra, 314, Can. 18; Nicaea, 325, Can. 16) and when the word *diocese,* which in civil administration, signified a minor and then a larger province, passed into ecclesiastical terminology, we find it till the sixth century often used in the sense of parish. (Adge, 506, Can. 54; Tarragona, 517, Can. 7, 8; Epaon, 517, Can. 8; Ducange, Dioecesis; Faure, l. c., p. 59, 62.) All the faithful living in the episcopal city and adjacent country formed but one congregation and repaired to the Bishop's church for the divine service, the reception of the Sacraments and spiritual instruction.

3. The increase of the Christians, particularly after the edict of pacification, led to the multiplication of centres of religious life. St. Optatus, at the end of the fourth century, refers to the forty basilicas of the city of Rome (De Schism. Donat., ii. 4), and according to St. Epiphanius, about the same time in the city of Alexandria each quarter had its own church and its own presbyters (Adv. Haereses, 68, 4; 69, 1; Sozomene, H. E., i, 15), but these second-

ary churches were often attended by members of the Bishop's presbyterium, and even when they had priests or deacons attached to them they remained subordinate to the mother church, for the Bishop reserved to himself the administration of the Sacraments and the celebration of liturgical functions. Except, perhaps, in a few places, like Alexandria, urban parishes did not become independent with full parochial rights till about the ninth century. (Mourret, o. c., vol. iii, p. 336; Revue des Questions Historiques, Oct., 1905, p. 645.)

4. In rural districts, by force of circumstances, the development of parishes proceeded more rapidly; still no reliable document proves the existence of pastors in the modern sense of the term before the fourth century, if even at that date. The few Christians who in the beginning lived in country places went to the nearest city for divine services, as we learn from St. Justin (Apol., I, 67); when they grew more numerous, a member of the Bishop's presbyterium would be detached from time to time to go and minister to them.

In the East, as soon as the Christians formed communities of some importance, they were placed under the care of Chorepiscopi. In the middle of the fourth century, the Councils of Laodicea (Can. 57) and of Sardica (Can. 6) forbade the appointment of Bishops in small country places where a priest sufficed. This favored parochial organization, and other Synods of this period refer more frequently to country presbyters and deacons. (Neo-Caesarea, 314, Can. 13; Antioch, 341, Can. 8.)

In Egypt, according to the testimony of St. Athanasius, priests had charge in his day of ten villages in the Mareotis district; before him Dionysius, Bishop of Alexandria, refers several times to those

who occupied a similar position in the region of Arsinoe and other cities of Egypt and Libya.

In North Africa the custom seems to have continued till the fifth century to set a Bishop of full rank, not a Chorepiscopus, over every community of any importance, and similarly in Italy the large number of Bishops and small size of the dioceses allowed Bishops to attend to the needs of their people through the clergy of the city longer than in other countries.

In Gaul and Spain the enactments of Councils in the first part of the fourth century (Elvira, 300, Can. 77; Arles, 314, Can. 18, 21) imply the existence at this time of rural communities with a resident clergy. They soon increase and churches multiply rapidly under the influence of various causes after the conversion of Constantine. Devotion to martyrs prompted the faithful to erect chapels on their tombs; the great landowners wished to have oratories on their estates or villae for the convenience of their family, their slaves, or tenants; more frequently still the Bishops built churches in the *vici* after the conversion of some of the inhabitants, along the Roman highways, in places of easy access, at the crossing of roads, where the men scattered through the farms met for the transaction of business. Priests or deacons from the city church would then visit these churches or chapels from time to time, give instruction to the people they could gather around them, perform certain liturgical functions, and go away again. As this service proved insufficient, a resident priest was granted to the communities that needed his ministrations and guaranteed his support. St. Gregory demands as endowment for a villa oratory, a farm with the necessary implements, a yoke of oxen, two cows, fifteen head of sheep, a bed and

four pounds of silver. (Epist. 12.) The ecclesiastics attached to these churches or chapels enjoyed at first very limited powers, but most of them obtained gradually permission to administer the Sacraments and celebrate the Holy Sacrifice, having to go to the central church only on more solemn occasions a few times a year. The priest who had charge of the *vicus* generally was the first to obtain independence in spiritual and temporal matters and the rank of pastor in the full sense of the term. (Lesetre, La Paroisse, l. c., ch. ii; Faure, l. c., p. 58-62.)

In England it was Archbishop Theodore who, in the latter part of the seventh century, inaugurated, or at least gave the chief impulse to parochial organization. Before him, Christians who lived outside of large cities had often to depend for their spiritual needs on the ministrations of itinerant preachers who came to them from the neighboring monasteries. Apparently in many places they did not even have churches, but the missionaries gathered the people at the foot of high crosses erected in some central location and there celebrated Holy Mass in the open air, gave instructions and administered the Sacraments. Theodore divided the diocese into well-defined districts and placed every one of them under the care of a resident priest. (Hook, Lives of the Archbishops of Canterbury, p. 159; Mourret, l. c., p. 178.)

240. 5. By the end of the seventh century the office of parish priest and the parish system possessed all their essential elements; henceforth it remained only to define certain details with greater precision, to adapt the discipline to the varying needs of churches and chiefly to extend it to all the sufficiently developed communities. This work has continued to the present day. In the time of the Council of

Trent there still existed, even in already ancient dioceses, cities and country places where parochial churches did not have any fixed boundaries, nor their rectors a flock of their own to govern, so that they administered the Sacraments indiscriminately to all who desired them. The Holy Synod, therefore, enjoined on the Bishops, for the greater security of the salvation of the souls committed to their charge, to divide the people into distinct and well-defined parishes and to assign to each parish its own perpetual and peculiar parish priest, who may know his own parishioners and from whom alone they may lawfully receive the Sacraments; or to make such other provision as may be more beneficial, according as the character of the place may require. They were to have the same thing done as soon as possible in those cities and other places where no parish churches existed, any privileges and customs, even though immemorial, to the contrary notwithstanding. (Sess. XXIV, c. xiv, de Ref.)

241. 6. In the United States, the large extent of the first dioceses, the scarcity of priests, the difficulty of communication and other circumstances, did not permit in the beginning the introduction of strict parochial divisions. Missionaries had often to consider possibility and convenience rather than boundaries. In the meeting held in 1810 the Bishops even gave jurisdiction to one another over their respective territories, and this jurisdiction they partially communicated to their clergy. The second Provincial Council of Baltimore, in 1833, had to withdraw this arrangement, as it had opened the door to abuses.

As a result of these conditions, it came to pass that in some places several priests claimed as their own the same district and the same church and exer-

cised authority therein independently of one another. The first Provincial Council of Baltimore, held in 1829, reproved such a state of things as contrary to the tradition of the Church and the good government of souls and as a source of great confusion and much discord; it commanded Bishops to correct the disorder as soon as possible by putting one pastor in charge of every place, with other priests to assist him if necessary.

A few years later, in 1866, the Fathers of the second Plenary Council of Baltimore, recognizing the great advantages of a parochial organization such as the common law of the Church calls for and as it exists in Catholic countries, decided, since circumstances did not permit to establish it at once, to make at least an effort to introduce it gradually and, therefore, they decreed that in all the dioceses a certain district equivalent to a parish with well-defined limits should be assigned to each church, and that on its rector parochial or quasi-parochial rights should be conferred. They added, however, that in using the names *parochial right, parish,* and *parish priest* they in no wise intended to bestow upon the rector of any church whatsoever the right of irremovability. (N. 123-125.) This meant erection of quasi-parishes but not of parishes in the full canonical sense of the term; their rectors did not acquire the standing of real pastors and their authority remained a delegated one. They continued to exercise the cure of souls not in their own name, but in that of the Bishop.

The third Plenary Council of Baltimore in 1884 advanced a step further and enacted that in every diocese a certain number of missions should have a permanent or irremovable rector. (N. 33.) But this did not change otherwise the canonical status

of the quasi-parishes and quasi-pastors, nor did the transfer of the dioceses of the United States from the jurisdiction of the Propaganda, in 1908, to the government of the common law affect the existing legislation. The Consistorial Congregation declared likewise (June 28, 1915) that the Decree *Maxima Cura* (Aug. 20, 1910) had not given greater permanency to the rectors of parishes or missions who remained the vicars of the Ordinaries.

The publication of the New Code had a different effect; under the present law the divisions of dioceses constitute parishes in the full sense of the term and the priests in charge of them have all the duties and rights of canonical pastors.

II. NATURE OF THE OFFICE OF PARISH PRIEST. (Can. 451-452.)

242. 1. *Name.* Ancient Synods refer to the priests in charge of the first parishes as *presbyteri dioecesani* in contradistinction to *civitatenses* (Agde, 506, Can. 22, 54); *presbyteri vicani, plebani,* priests presiding over a *vicus* or a rural district called plebs; archpriests if they have other priests under them *presbyteri parochienses, parochiani, parochitani* when the word *paraecia* definitely assumes its present sense in the sixth century; *presbyteri curati,* because they have the care of souls. The fourth Lateran Council (1215, Can. 21) still designates the parish priest by the expression *sacerdos proprius.* The term *parochus,* so common in modern times, occurs very seldom before the Council of Trent, which does not commence to use it frequently till the last sessions. The title of rector or pastor belongs properly to Bishops and even exclusively, if we take it to imply both external and internal jurisdiction. Some canonists formerly reserved it to them because of the meaning

attached to it by Jansenists (Bouix, 1, c., p. 142), but the danger of misunderstanding no longer exists at present and its application to priests in charge of particular churches has the sanction of the Council of Trent (Sess. XXIV, c. 12, de Ref.), the Roman Pontifical in the chapter on diocesan Synods and the Code itself. (Can. 216, 454, § 1; 479.)

243. 2. *Definition.* The Code defines a parish priest or pastor as a priest or moral person upon whom a parish has been conferred in title, with the care of souls to be exercised under the authority of the local Ordinary.

1°. A true pastor holds the parish in title, that is, he receives a title to it by which it becomes canonically his, so that he administers it in his own name, not as a mere delegate or vicar of the Bishop. His power is ordinary, as attached to the office and defined by the common law; hence, although not independent, it can not be restricted without legitimate cause nor so diminished as to lose its character. He can delegate it within the limits set down by law; thus he may authorize any priest to assist at a particular marriage and his assistants to assist at any marriage in his parish (Can. 1096), but he can not delegate jurisdiction for confession. (Can. 874.)

Nor does the power of a pastor in his parish exclude that of the Bishop; the latter possesses and can exercise ordinary jurisdiction in any part of his diocese. He could likewise, for some grave reason, delegate another priest to exercise parochial functions in a parish against the will of the pastor, but this only in particular cases.

2°. The care of souls attached to the pastoral office includes the right and duty of preaching the word of God, administering the Sacraments, celebrating the divine services, and in general looking

after the spiritual and temporal interests of the parish; it implies jurisdiction in the internal but not in the external forum. A parish priest can not enact laws or precepts binding in conscience; he may formulate certain rules regarding, for example, the order of the divine services. These, however, do not impose a strict obligation; they do not constitute acts of jurisdiction properly so called, but rather acts of paternal administration in the nature of advices and practical directions.

For the same reason, pastors can not dispense from the laws of the Church except by special concession of the legislator. Thus the Code allows them to dispense, under certain conditions, from the laws of fasting, abstinence, and the sanctification of feasts; also, in some cases, from marriage impediments. (Can. 1045, 1045, 1245.)

Only the Pope and Bishops, who possess legislative and judicial power, both in the internal and external forum, have care of souls in the full sense of the term.

244. 3°. Pastors must exercise the care of souls under the authority of the local Ordinary. The Church has always considered this subordination of priests to Bishops as essential to her constitution. Hence the severe measures taken from the beginning to prevent the organization of parishes from endangering unity in the diocese and the concession of power to parish priests from infringing upon the divine right of Bishops.

The Council of Antioch (341, Can. 5) pronounces deposition against a priest who sets up an altar without the Bishop's consent and threatens him with further penalties in case of obstinacy. Synods lay down as a first condition for permission to erect a church that it will remain under the Bishop's con-

trol. (Orleans, 511, Can. 17.) The priest put in charge had to obtain the chrism for Baptism from the Bishop, who reserved to himself also the right of consecrating churches and altars, visiting the parishes and correcting abuses. Heretics at different times maintained the equality of priests with, or the independence of pastors from, Bishops; the Church condemned presbyterianism under all its forms, whether advocated by Arius in the fourth century, Wicliff and the Hussites in the Middle Ages, or later on the Protestant Reformers and Jansenists. She rejected likewise the theories of Gerson, Richard of Armagh, and other "parochists" who exaggerated the prerogatives of parish priests. (Bouix, l, c., p. 81; Gieseler, Ecclesiastical History, iii, p. 89.) In our day Pope Pius X refused approval to the so-called cultural associations in France because they did not offer sufficient guarantee of proper subordination to episcopal authority.

245. 3. *Quasi-Pastors.* To pastors are assimilated by law, in regard to parochial rights and obligations, as described in Can. 461-463, 464-470, not necessarily in other matters like, for instance, stability in office, the quasi-pastors or rectors of quasi-parishes erected in Vicariates or Prefectures Apostolic in accordance with the prescriptions of Can. 216 and the Instruction of the Propaganda of July 25, 1920. (A. A. S. vol. xii, p. 331.)

To them the present law assimilates likewise the vicars parochial who have full charge of the parish, as occurs in the case of vicars parochial proper, or administrators (Can. 471), of the *vicarii oeconomi* (Can. 472), and some times of the *vicarii substituti* and *adjutores* (Can. 474, 475), as more completely set forth in the next chapter.

These come under the name of pastor as used in

law and they have the same parochial rights and duties as pastors, except for some explicit or implicit declaration of the legislator to the contrary; thus, quasi-pastors are not bound to say Mass for the people as pastors. (Can. 306, 339.)

The same thing may be said of the rectors of those missions or churches which for lack of a sufficient population or of resources can not form parishes and must, according to the decree of the Consistorial Congregation of Aug. 1, 1919, remain included temporarily in another parish as subsidiary churches or *capellaniae*. These rectors have the care of souls like ordinary pastors, but not the obligation of saying Mass for the people, as expressly stated by the Congregation. (Vermeersch, l, c., n. 387.)

246. 4. *Military Chaplains.* As to military chaplains, whom some canonists used to consider as personal pastors, the Code contains no formal provision; it only refers us to the special arrangements made by the Holy See in the different countries and which it leaves unchanged.

In some countries, as in France and Belgium, each individual chaplain depends on the Bishop of the place in which he resides and receives his faculties from him; in others there is a Vicar Apostolic called Military Bishop or major chaplain, with authority over minor chaplains, who obtain their powers from him.

247. 5. *Habitual Pastors.* Ordinarily the care of a parish is committed to an individual person, but at times it is entrusted also to a moral person as, for example, to a chapter, a community, or a university. This condition exists when the parish is so closely united to the moral person that the latter has the title to the former and possesses it canonically as its pastor. In such cases, however, the moral

person can not actually exercise the care of souls, but must appoint a vicar to do so. (Can. 471.)

The Holy See alone has power thus to unite parishes to moral persons.

III. QUALIFICATIONS FOR THE PASTORAL OFFICE. (Can. 453.)

248. These qualifications pertain some to the validity, others to the lawfulness of the appointment.

1. For the validity of his appointment a pastor, under the present law, must be in priestly orders, and for appointment to a secular parish he should himself belong to the secular clergy. (Can. 1442.)

1°. The prescriptions of ancient Synods imply that in some cases deacons had the care of rural communities (Agde, 506, Can. 49) or that they alternated with priests. (Tarragona, 516, Can. 7.) This however, could not last very long and the Bishops had soon to authorize the celebration of Mass and the administration of the Sacraments in country churches and consequently place priests over them. The mission and functions of a pastor of souls suppose in him by their very nature the powers of the priesthood, but the introduction into the Church in the eleventh century of the beneficial system opened the way for the distinction in practice between office and benefice and permitted one to obtain the title to a parish with the emoluments that went with it, although he did not personally discharge the pastor's duties or to enjoy the fruits of the parochial benefice without personally fulfilling the office and before receiving the priesthood.

The Popes and Councils of the time demanded for appointment to a parish that the candidate should be a subdeacon or at least in Minor Orders and that he should receive the priesthood shortly after taking

possession of his office which, according to common and afterwards official interpretation, meant within a year (5, X, I, 14; 14, 35, I, 6, in Sexto), but many neglected this last requirement or obtained dispensation from it through the influence of powerful patrons, under the pretext of study, etc. Synods urge compliance with it constantly, without much apparent results, for the names of men in Minor Orders continue to appear on the parochial lists of incumbents.

The Council of Trent did not change the law on this subject and it had remained substantially the same to the present day; but after the spoliation of parishes by the revolution of the eighteenth century and the abolition of the old parochial benefices in most countries of Europe, the practice had commonly prevailed again to appoint none but priests to the pastoral office. The New Code has sanctioned this custom and given it force of law.

249. 2°. That regular benefices belong to the regular and secular benefices to the secular clergy has long been a universally received principle in canon law. (5, I, 6, in Sexto; 1, I, 5 Clem.)

Many parishes grew up around monasteries or on their estates and depended on them, no doubt, in the beginning for spiritual as well as material assistance; but few of the monks in those early days received Holy Orders and they refrained generally from engaging in parochial work. In the course of time, however, they departed somewhat from this rule, for a Council of Mayence (847, Can. 17) under Archbishop Rabanus Maurus, himself a Benedictine, decrees that monks should not take the direction of parishes without the consent of the Ordinary, and it adds that they should give him an account of those they have and come to the Synod when sum-

moned. (Thomassin, l, c., P. I, L. II, c. 25, n. 8.) A Council of Arles, four centuries later (1260, Can. 5), says that most of the parishes in that province belong to the monks or Canons Regular and that for some time they had administered them themselves both in spiritual and in temporal matters, although they did not do so then.

More commonly monks did not now exercise the cure of souls even in the churches attached to their monasteries, but left this to vicars. A Council of Rouen forbids the commitment of parishes to them (1074, Can. 5) and several other Councils of the same period have similar enactments. (Poitiers, 1076, Can. 6; 1100, Can. 11; Labellone, 1080, Can. 12.) They give as reason for their action the incompatibility of the pastoral duties with the obligations of the monastic life and at times also the too independent attitude of some monks toward episcopal authority.

The third Lateran Council extended this discipline to the universal Church (1178, Can. 9, 10; 2, 5, X, III, 35), but because either its decrees admitted of various interpretations or did not meet everywhere with perfect acquiescence, subsequent Synods renew the prohibitions against Religious and even threaten the disobedient with excommunication. (Cognac, 1238, Can. 29; Tours, 1239, Can. 13; Cologne, 1423, Can. 12; 1536, Can. 13; Thomassin, l, c., P. I, L. III, c. 22.)

The Council of Trent confirmed the existing legislation (Sess. XIV, de Reg., c. 11; XXV, c. 11) and Gregory XIII removed all uncertainty about its import by explicitly declaring in 1581, through the Congregation of the Council, that secular parishes can not be turned over to regulars without papal dispensation; he stated also that the rule applied to

Canons Regular, whom previous Popes had exempted from it. (5, X, III, 35.) (Bouix, De Jure Regularium, vol. ii, p. 9, ff.; Sebastianelli, Praelectiones Juris Canonici, De Rebus, p. 196.)

250. The Code maintains the old principle excluding Religious from secular benefices, with this difference, that whilst the ancient law affected only regulars, that is, probably at least, Religious with solemn vows, the present one concerns all who belong not to the secular clergy but to a religious family, which clearly includes also Orders with simple vows, (Can. 488, 1°) although not those religious organizations which have no vows. (Vermeersch, o. c., vol. ii, n. 768.)

In England, Scotland, and the United States the canonical status of Religious had been defined by Pope Leo XIII in the Const. *Romanos Pontifices,* May 8, 1881. (A. S. S., xiii, p. 489; Acta III Plen. Conc. Balt., p. 212.) According to the third Plenary Council of Baltimore, to give over to a Religious Community a parish or even a mission, Bishops need the advice of their Consultors and permission from the Holy See. They used to have an Indult authorizing them to appoint Religious to secular parishes, but only for want of secular priests, as long, therefore, as the want lasted, not permanently. (Putzer, Commentarium in Facultates Apostolicas, editio 5a, n. 158.)

Parishes are of their nature and by presumption of law secular benefices and considered as such, unless the deed of foundation, prescription, or a special privilege proves the contrary.

251. 3°. Formerly the law demanded of a candidate to a parish that he should have begun his twenty-fifth year, and in times past the question of age had its importance, when patrons presented for

the office of pastor young clerics, like the one rejected by Bishop Grostete and whom he describes as a "boy still in his Ovid," but now the requirement of the priesthood which supposes twenty-four years complete rendered further legislation on the subject unnecessary.

2. For the lawfulness of their action ecclesiastical superiors must appoint to parishes men of good morals, endowed with learning, zeal for souls, prudence and all the other qualities and virtues necessary for the successful administration of the parish in question and required by common or particular law. Special conditions in a certain province or district may demand qualifications not needed elsewhere, as, for example, the knowledge of certain languages. Provincial or diocesan Synods may, in such cases, make this a condition for appointment to parishes. Even in the same diocese the needs of one community may differ from those of another.

IV. STABILITY IN THE PASTORAL OFFICE. (Can. 454.)

252. 1. *Ancient Discipline.* 1°. The Apostles, prophets and teachers, in the early Church, go from city to city announcing the Gospel, founding Christian communities and confirming the brethren; but as soon as they can begin the work of organization they appoint Bishops, priests, and deacons to attend to the needs of individual churches and to remain attached to them. Ancient Councils often express their disapproval of wandering clergymen and enjoin stability under threat of severe punishment. (Arles, 314, Can. 2, 21; Nicaea, 325, Can. 15; Antioch, 341, Can. 21; Sardica, 343, Can. 1; Chalcedon, 451, Can. 5.)

As clerics might not relinquish their office with-

out grave reasons and due authorization, so it required likewise a serious cause to deprive them of it. The Conncils of Nicaea (Can. 19) and Antioch (Can. 11) specify the offences which would justify deposition. Of transfers from one church to another in the same diocese early documents have very few mentions. There was no occasion for them as long as the clergy belonged to the Bishop's church, and as soon as the other churches obtained some independence and separate revenues they aimed at having their own clergy ordained for them and dedicated to their service permanently. The Council of Chalcedon (451, Can. 5, 6) made it a law that every cleric should have a church assigned to him at his ordination and remain attached to it.

2°. The pastors of the fourth and fifth centuries, particularly in country districts, were generally men born and educated in the parish and as far as possible trained in the functions of the lower Orders in the church which they afterwards governed. A Constitution of Emperor Honorius in 398 prescribed that for each parish only natives of the place be ordained. (Theodosian Code, xvi, 2, 23; Imbart de la Tour, l, c., p. 64; Lesetre, l, c., p. 27.)

Some Councils give permission to Bishops to bring deacons and inferior clerics from country churches to the cathedral and oblige the latter to accept the transfer when the common good demands (Carthage, Merida, 666, Can. 12), but St. Gregory refused his approval to a Bishop of Salone who, to deprive an Archdeacon of his office wanted to raise him to the priesthood, and of him John the Deacon writes that he avoided even the promotion of any cleric against his will, lest it might look like an indirect deposition. (Thomassin, l, c., P. II, c. 15-20, vol. iii, p. 349, 351, 367, 370.)

253. 3°. After the institution of benefices, begun in the ninth and completed about the eleventh century, that is, after the division of church revenues destined for the support of the clergy into distinct portions, as to each office regularly corresponded a benefice on which the incumbent of the office depended for his living, stability in office became still more necessary as a condition for order and security, and for this reason the Synods of this period frame a very complete legislation to protect it. They admit, it is true, temporary as well as perpetual benefices, *beneficia manualia et perpetua,* but the benefices with cure of souls, *beneficia curata,* always belonged to the latter class, and they laid it down as a rule that a person having the responsibility of a parish should hold his office for life. To deprive him of it would require a very serious offense and a formal, complex trial.

The Decretals contain no text explicitly authorizing a Bishop to remove or transfer a pastor from his parish against his will for merely administrative reasons, because the good of souls demands it. They often repeat that the interests of the many ought to prevail over those of an individual, that the salvation of the people is the supreme law; they admit also that, in spite of the sacred bond which unites a Bishop to his church, he may resign for certain grave reasons, such as weakness of body, want of knowledge, consciousness of guilt, ill will of the people. (10, X, I, 9.) These should suffice to justify the resignation of a parish priest or even to force it upon him if he does not offer it spontaneously. Pope Urban III had even declared that if a Bishop saw any necessity for it he could transfer prebendaries from one place to another where they could use their talents to better advantage (Rome,

1186, 5, X, III, 13), but whether he presupposed the consent of the parties concerned or not, did not clearly appear. The great canonist of the fourteenth century, John d'Andrea, thought that he did, whilst a not less great authority in the fifteenth, Nicolo dei Tudeschi, more commonly known as Abbas Panormitanus, maintained that he did not. Practically, during the Middle Ages, compulsory removal from the pastoral office appears almost exclusively as a punishment for a crime and very seldom, if ever, as an administrative measure—in those days when the faith was strong and the people were less exacting; when also the system of benefices rendered changes more difficult and the position of temporal rulers occupied by many Prelates might make it inadvisable to grant them too extensive powers.

254. 4°. The Council of Trent formally and explicitly decreed again that each parish should have its own special and perpetual pastor (Session XXIV, c. 13) and this had remained the common law to the present day. Some canonists even considered perpetuity or irremovableness as an essential element of the parochial office and refused the title of canonical pastor to one who did not enjoy this prerogative. (Smith, Elements of Ecclesiastical Law, III, n. 259.)

At the beginning of the last century, however, in the reorganization of dioceses by application of the Concordat of 1801 in France, Belgium, and other countries affected by the French Revolution, a large number of parishes were restored with the condition that the priests put in charge of them and designated as *desservants* would remain revocable at the Bishop's will. This introduced what some canonists call a new species of parishes (Wernz, II, n. 822) and a discipline certainly not in full conformity

with the Tridentine Decrees. (Bouix, De Parochis, p. 221.) Still, the Holy See accepted or tolerated it, and as later on some Bishops manifested some intention of modifying it, the Roman Congregations directed them not to do so. (Bargilliat, l. c., n. 1016.) Experience had shown, as the Council of Tours stated, that it facilitated the administration of dioceses and allowed Bishops in troublous times more readily to provide for the needs of clergy and people and for the honor of religion. For these or similar reasons other countries, like Holland and Germany, had also their removable pastors. In England, Scotland, and the United States, even after the restoration or institution of a regular hierarchy and the erection of quasi-parishes, the Bishops did not consider it possible to give all their rectors the stability of canonical pastors.

255. 5°. Thus, although the common law granted irremovability to parish priests, a large proportion of them did not possess it. Nor did the canonical status of either class fully correspond to present conditions.

On the one hand, while in modern times, owing to different social surroundings, the influence of seminary training and other causes, judicial removals or penal depositions of pastors had become very rare in most countries, it occurred, on the contrary, more frequently now that the good of souls would demand the transfer or removal of a pastor otherwise free from any moral guilt. As said before, the *Corpus Juris* contained no formal law to meet such emergencies. The Council of Trent (Sess. XXI, de Ref. c. 6), speaking of pastors irreproachable in their conduct but unfit for their office, had recommended to give them coadjutors or assistants or provide for the needs of the parish in some other way. The

other provision, which naturally suggested itself and often the only possible one, was administrative removal. In fact, from this time on the Bishops have frequently recourse to it, and the Roman Congregations repeatedly sustain their action. Only nothing had been determined as to the manner of proceeding in these removals or the causes that justified them, hence arbitrariness at times and more frequently serious difficulty in protecting the interests of souls.

On the other hand, removable pastors did not seem to enjoy sufficient stability. Judicial removal required even in their case a serious offense and a canonical trial, as the Propaganda declared for the United States (May 20, 1887); administrative removal supposed also some reasonable cause. Removableness at will does not mean without reason. The Councils of Baltimore and the Propaganda (Inst. 1878) reminded Bishops of this principle on several occasions, but the appreciation of the cause was left almost entirely to the judgment of individual persons, and the Church wishes as much as possible to have the exercise of jurisdiction regulated by law.

To remedy these defects, Pope Pius X published, August 20, 1910, the Decree *Maxima Cura,* in which he defined the causes for the administrative removal of pastors, whether removable or irremovable, and prescribed a definite mode of procedure for it. As a result of this, all canonical pastors enjoyed henceforth about the same degree of stability. To deprive them of their parish, either in a judicial or administrative way, supposed almost the same causes and required the same formalities. The Code has retained this legislation, but with some important changes.

256. 2. *Stability in the Pastoral Office under the Present Law.* (Can. 454.) 1°. Principle. The Code affirms again the necessity for a priest set over a parish as its own proper rector of some degree of stability. It does not use the term perpetuity, as the Council of Trent did, and it adds at once that stability does not exclude the possibility of removal in cases and with the formalities determined by law. This held good also under the former discipline, but whilst according to ancient law all canonical pastors received an equally permanent appointment, the present one admits degrees of stability among them.

2°. Degrees of Stability. The Code calls irremovable those pastors who possess stability in the highest degree and removable those who possess it in a lower degree. We might distinguish a third class of pastors, those belonging to a Religious Order who depend entirely on their superior's will. The greater or lesser facility with which the pastors can be removed administratively or transferred determines the degrees of stability. They do not differ as to judicial or penal removal. (Can. 2168-2185.)

257. (*a*) Irremovable Pastors. (i) Their removal. (Can. 2147-2156.) The Code gives as chief causes for the administrative removal of a pastor: ignorance or habitual infirmity, either mental or physical, ill will of the people, loss of reputation, inefficient administration of church property.

When the Bishop, after consulting two of the diocesan examiners, reaches the conclusion that one of these causes exists he invites the pastor to resign his parish. If the pastor does not resign nor ask for delay or attempt to disprove the charges, the Bishop may remove him at once. If the pastor wishes to disprove the charges, the Bishop must discuss his reasons with the two examiners and pronounce the

sentence. The pastor has ten days to appeal from the decree of removal, and if he does, the Ordinary must reconsider the case with the help of two of the parish priest consultors and render the final decision within ten days from the appeal.

After the removal or resignation of a pastor, the Ordinary, with the advice of the same two examiners, provides for him by transferring him to another parish or pensioning him.

(ii) Transfer. If the Ordinary considers that the good of souls demands the transfer of an irremovable pastor to another parish, he may invite him and try to persuade him to consent to the change, but he can not transfer him against his will without special faculties from the Holy See. (Can. 2162.)

258. (*b*) Removable Pastors. (i) Removal. (Can. 2157-2161.) The causes for removal and the provisions to be made afterwards are the same as in the previous case; the mode of procedure alone differs.

If the Ordinary judges that there is sufficient cause for it, he advises and exhorts the pastor to resign. Should the pastor refuse to do so, he must give his reasons in writing. The Ordinary considers them with two examiners, and if they do not find them sufficient, he again urges the pastor to resign under pain of being removed if he does not do so within a fixed time. At the expiration of this delay the Bishop may pronounce the decree of removal, which does not in this case admit of appeal to the board of parish priest consultors.

(ii) Transfer. (Can. 2163-2167.) A Bishop may transfer a removable pastor against his will to another parish, provided that the latter be not too inferior to the one he has now and the following formalities be observed.

If the pastor does not yield to the exhortations of the Ordinary to accept another parish, he must give his reasons for it in writing. If they do not seem convincing to the Ordinary, he takes the advice of two parish priest consultors and examines the whole case with them, after which, if he still considers the change as desirable, he renews his exhortations to the pastor, and if they prove fruitless and he continues in his conviction, he commands the pastor to repair to the new parish within a fixed time; in case of disobedience, he deprives him of his present parish.

(*c*) Pastors Belonging to a Religious Order. Because of their personal status, they are always removable at will and with equal right both by the Ordinary of the place, who has only to notify the Religious superior, and by the Religious superior, who must notify the Ordinary. Neither has to give the reasons of his action to the other or wait for his consent to it, still less to prove its legitimacy. The only remedy, if the measure seemed unjust, would be appeal *in devolutivo* to the Holy See.

259. 3°. Determination of Fixity. (*a*) The publication of the Code did not change the canonical status of existing parishes; those which possessed at the time the privilege of irremovableness either by common or particular law or by custom and those likewise which have obtained it since, retain it and the Ordinary could not take it away from them without papal intervention.

(*b*) Removable parishes did not become *ipso facto* irremovable, but they may be made so by the Bishop with the advice of his chapter or consultors, but not by the Vicar Capitular, because he would thereby put restrictions on the Bishop's power.

(*c*) Parishes erected after the promulgation of

the Code should be considered as irremovable unless the Bishop, after considering in each particular case the special circumstances of persons and places and taking the advice of his chapter or consultors, judges it more prudent to maintain them, and declares them removable.

(*d*) All quasi-parishes, such as exist in Vicariates or Prefectures Apostolic, are removable.

(*e*) A pastor belonging to a Religious Order is always personally removable at will, even though the parish itself would be among the irremovable ones.

V. APPOINTMENT OF PASTORS. (Can. 455-459)

260. 1. *Who Appoints Them.* 1°. The Bishop. (*a*) The nomination and institution of pastors belong by right to the Ordinary of the place, which means, first, the Bishop. The Code excepts from this rule only parishes reserved to the Holy See and explicitly condemns all contrary customs.

The Popes, particularly since the Avignon period, had established numerous reservations; many of them have ceased but some still continue in force. Thus, the Holy See even now reserves to itself the appointment of a successor to a pastor who died in Rome, or belonged to the Roman Curia even as a merely honorary member like Domestic Prelates or Chamberlains, or was promoted by the Holy See, for example to a Bishopric. (Can. 1435.)

This law of papal reservations did not concern quasi-parishes and therefore did not apply, before the promulgation of the Code, in countries like the United States, where, consequently, no custom could exist against it.

(*b*) Ordinarily at present the Bishop appoints to parishes freely or by way of free collation. The candidate may also be elected and presented to him.

Moral bodies, such as chapters, may possess that right of election; in the sixth century the people had a share in the choice of their pastor, but they gradually lost their privilege chiefly through the action of influential patrons, who excluded all other intervention than theirs. A few parishes retained it till the later Middle Ages, but the Council of Trent does not suppose it any longer in existence. Attempts made in the last century to give the election of pastors to their parishioners, in Italy, Switzerland, and Prussia, met with prompt rebuke from Rome. (Pius IX, Const. *Etsi Multa,* Nov. 21, 1873.)

261. Presentation by patrons has played a much more important and more lasting part in the appointment of pastors. The Church granted to founders or benefactors of churches the privilege of presenting the rector to the Bishop for institution. This privilege was transmitted, exchanged, and extended in various ways particularly under the feudal system, so that the majority of parishes came thus to depend on patrons. In the diocese of Paris, for example, in the twelfth century, the Bishop had the free appointment to only two hundred and fifteen churches out of four hundred and sixty-nine. At the end of the tenth century Raimond, Count of Rouergue, exercised the right of patronage over sixty churches or chapels. (Lesetre, l. c., p. 64, 66.)

The Church does not grant the right of patronage any longer and even invites those in possession to renounce it, without obliging them to do so (Can. 450, 451), recommending rather to respect it as well as the existing rights of election.

In the United States church trustees claimed at one time the prerogatives of patrons and even more extensive ones. This gave occasion to the declaration of the first Provincial Council of Baltimore (1829,

n. vi) that the American Church recognized no right of patronage to any individual or moral person.

262. 2°. Vicar Capitular or Administrator. (Can. 455) The Administrator of a diocese during the vacancy or quasi-vacancy of the see, as explained above (Can. 429, 430), has power:

(*a*) To appoint the various vicars parochial, whether vicars proper, vicars *ad interim,* or œconomi, temporary substitutes, assistants or coadjutors, of whom the Code treats in the next chapter. (Can. 472-476.)

(*b*) To confirm elections and accept presentations to vacant parishes and to grant canonical institution to candidates thus elected or presented.

(*c*) To confer parishes of free collation, that is, whose appointment belongs entirely to the Bishop, when the vacancy has lasted at least for one year. This constitutes an innovation. Under the former discipline the Vicar Capitular could not appoint to parishes even in cases of prolonged vacancy without permission from the Holy See.

263. 3°. Vicar-General. None of the above powers to appoint pastors, vicars, or assistants belongs to the Vicar-General without special mandate. Formerly he could confirm elections and accept presentations to vacant parishes and confer parishes upon candidates pronounced most worthy of them in strict concursus. In cases of quasi-vacancy or when the Bishop is prevented from administering the diocese through captivity, imprisonment, exile, or some other impediment, the Vicar-General who acts as Administrator has all the powers of a Vicar Capitular.

4°. Religious Superiors. For appointment to parishes entrusted to members of a Religious Community the superior to whom this right belongs by

the constitutions of the Order presents a priest of his community to the local Ordinary, who grants the canonical institution, provided the candidate possesses the learning and all the other qualifications required for the government of the parish in question. (Can. 456.)

5°. Vicars and Prefects Apostolic. (Can. 457.) In missionary countries quasi-pastors belonging to a Religious Community are appointed in the same manner as pastors in a regular diocese, that is, presented by their superior and granted institution by the local Ordinary.

Quasi-pastors of the secular clergy are appointed by the Vicar or Prefect Apostolic after taking the advice, at least by letter, of his council composed, as said before (Can. 302), of at least three of his older and more experienced missionaries.

264. 2. *Time of Appointment.* (Can. 458.) The Ordinary must provide for a vacant parish within the time prescribed by any special law that might apply to the case and at the latest within six months from the moment the vacancy became known to him, unless in view of peculiar circumstances of place and person he deems a delay advisable. The Congregation of Council officially sanctioned such delays during the war. (Nov. 14, 1916.) Should the vacancy be prolonged through negligence beyond the allotted time, the appointment would devolve upon the Holy See.

3. *Procedure in the Appointment.* (Can. 459.) 1°. Fitness of candidate. The law of the Church imposes upon local Ordinaries the grave obligation of choosing for the pastoral office, among all the available candidates, the one best fitted for the government of the vacant parish, without personal favorit-

ism, not permitting any motives extrinsic to the case to influence the decision. The appointment of a less worthy in preference to a notably worthier pastor, although unlawful, is not, however, declared invalid.

265. 2°. Qualifications Considered. In forming this estimate of the candidates' fitness the Ordinary must take into account their learning and also all the other qualities required for the successful administration of the particular parish under consideration.

3°. Investigation. He must, therefore, take means to find out the moral worth, executive ability, and intellectual equipment of the intended pastor.

(*a*) To ascertain the former the legislator directs him not to fail to consult the documents which the archives of the diocese may contain regarding the candidate, his fidelity to duty, his success in work previously entrusted to him, etc.; also to ask, if he deems it advisable, prudently and discreetly, for secret information, even outside of the diocese.

266. (*b*) Examinations. The examinations which every priest must take for at least three years after his ordination will furnish some indications as to the intellectual fitness, and the Ordinary must, everything else being equal, give his preference to the candidate who proved most successful in these tests. (Can. 130.) This, however, does not suffice; as a further proof of his intellectual ability the candidate must pass another examination in presence of the Ordinary and of synodal examiners. The method and matter of this examination seem left to the judgment of the examiners, who have the rules formerly laid down for the concursus to guide them. These prescriptions apply to all candidates to a parish, whether removable or irremovable; but the Ordinary

may, with the consent of the examiners, dispense one otherwise well known for his theological learning.

The Commission for the Interpretation of the Code, explaining this provision of the present legislation, made the following declarations. (Nov. 24, 1920.)

(i) A priest who has already proved his fitness for the pastoral office and held a parish need not take the examination again when moved to another parish if the initiative for the change comes from the Bishop, but he has to take it if he asked for the transfer, unless the Ordinary and the synodal examiners dispense him, considering that the proof he gave formerly of his ability suffices for the present appointment.

(ii) A pastor removed from his parish by administrative process, as prescribed in Can. 2154, need not undergo an examination before being appointed to another.

(iii) Nor does the obligation exist for a pastor whom his Ordinary officially asks to resign his parish and transfers to another.

(iv) If an ecclesiastic whom the Bishop thinks fit for a parish refuses to submit to the examination, as may occur when the parish offered him is not a very desirable or important one, and the case does not come under any of the rules permitting exemption, it must be referred to the Congregation of Council. This implies that the Ordinary has no authority to dispense from this law.

(v) The examinations undergone before the reception of Major Orders (Can. 996, § 2, 3) may serve as a test of fitness for the first appointment to a parish, but only on two conditions, *viz.* that they were passed in presence of the Ordinary himself and

synodal examiners and that they bore on all the subjects which form the subject-matter of examinations for parishes.

(vi) The examinations prescribed for young priests (Can. 130) do not dispense from the regular examinations for parishes, even though they were taken in presence of the Bishop and synodal examiners. (A. A. S., 1920, p. 573; N. R. T., Mars, 1921, p. 153.)

267. (*c*) Concursus. To provide parishes with worthy and competent pastors the Council of Trent enacted that these should be appointed by competitive examination or concursus under pain of nullity (Sess. XXIV, c. 18, de Ref.). Pope Pius V, then Clement XI, and principally Benedict XIV in the Const. *Cum illud,* (1742) completed this legislation, determining more in detail the conditions, method, and subject-matter of the examination.

This discipline had, for various reasons, fallen into desuetude in many countries. The Code does not bring it back into force, but only commands to maintain it where it had not been abandoned, till the Holy See provides differently.

In the United States the concursus substantially as defined by Benedict XIV became necessary for valid appointment to irremovable parishes by decree of the third Plenary Council of Baltimore. (1884, n. 36.) It remains, therefore, obligatory and under the same conditions as before the promulgation of the Code, until suppressed by papal authority. (III Balt. Coun., n. 40-60; Smith, l. c. vol. iii, n. 648.)

VI. UNITY OF PASTOR AND PARISH. (Can. 460.)

268. 1. A pastor should not hold several parishes in title. The Code excepts only parishes fully united

which, although remaining distinct as to rights, privileges, and temporalities, form legally one office only by being under one pastor.

This law does not forbid a pastor to administer a second parish temporarily, for grave reasons; he does not hold it in title.

2. In one and the same parish there must be only one pastor with the actual care of souls. This does not prevent the retention of the habitual care of souls by one pastor and of the actual care by another, as occurs regularly in a parish fully united to a moral body, like a chapter, which has the habitual care of souls but actually exercises it through a vicar.

Before the Council of Trent moral bodies, such as chapters, often exercised the actual care of souls and did not have vicars. The Council condemned that practice as does the present law (Can. 471), still Bishops could permit it in special circumstances.

In some places the custom had existed to the present day of appointing to the same parish several pastors, who exercised authority in turn or divided it among themselves in various ways. The Code reprobates all these customs and demands their suppression everywhere.

VII. INSTALLATION AND OATH. (Can. 461.)

269. 1. A pastor has the government of the parish from the moment he takes legal possession of it; till then, although he has received his appointment, he is forbidden to exercise the functions of his office. (Can. 2394.)

The Code provides that no one should take possession of a benefice conferred upon him of his own authority or before he has made the required profession of faith.

Regularly the Ordinary installs pastors in his dio-

cese either personally or through a delegate, generally the Vicar Forane.

The installation should take place in the manner prescribed by particular statute or custom and the usual rite should be observed, unless the Ordinary grants a written dispensation, which in such cases takes the place of a formal installation.

A pastor may take possession of his parish or be installed by proxy; he should for this issue a special mandate to that effect. (Can. 1443-1445.)

2. The Council of Trent commanded pastors to make a profession of faith at least within two months after taking possession of their benefice under pain of losing the fruits thereof. (Sess. XXIV, c. 12.) The present law demands that this profession of faith be made before the installation or as a part of the installation ceremony and directs Ordinaries to give warning to those who would neglect to do so and to punish them even with privation of their office if they do not comply with the law within the time assigned to them. (Can. 2403.)

The profession of faith is made in the hands of the Bishop or his delegate and according to the form given at the beginning of the Code and often designated as *Professio Piana.*

To the profession of faith Pope Pius X, in the Const. *Sacrorum Antistitum,* prescribed the addition of the Antimodernist Oath, and the Holy Office declared, March 22, 1918, that this rule remained in force after the promulgation of the Code until the Holy See would abrogate it.

The profession of faith can not validly be made nor the oath taken by proxy. (Can. 1407.)

The Code explicitly condemns all customs contrary to the legislation on the profession of faith. (Can. 1408.)

VIII. FUNCTIONS RESERVED TO PASTORS. (Can. 462.)

The present law reserves to parish priests the following functions, which no one can, therefore, exercise without their permission unless otherwise provided.

270. 1. Solemn administration of Baptism, which, as opposed to private administration, implies observance of all the rites and ceremonies prescribed in liturgical books. Even a *peregrinus* must go to his own proper pastor for solemn Baptism; children, for example, should be brought to the pastor of the place in which their parents have their domicile or quasi-domicile even when born elsewhere, provided it can be done easily and without much delay, otherwise any pastor could baptize them in his territory. (Can. 738.)

No pastor is allowed to baptize solemnly even his own parishioners in another pastor's territory without his permission. (Can. 739.) In a case of necessity these permissions may lawfully be presumed.

2. Carrying the Blessed Sacrament publicly to the sick. The right and duty to carry Holy Communion to the sick within the parish, even to non-parishioners, belongs to the pastor. Other priests may do so only in case of necessity and with the at least presumed consent of the pastor or Ordinary. (Can. 848.) Any priest may bring Holy Communion privately to the sick. (Can. 849.)

3. Administration of Holy Viaticum and Extreme Unction. Whether performed publicly or privately, these two functions belong to the pastor, except in cases of necessity and in a few others explicitly mentioned by law: dignitaries or Canons of the chapter

administer the last Sacraments to the Bishop (Can. 397, 3); in all clerical Religious Communities this function belongs to the superior; in the houses of nuns with solemn vows to the ordinary confessor or to the one who takes his place; in other lay communities, to the pastor or to the chaplain who has received this power from the Ordinary. (Can. 514, 464, § 2.)

4. Publication of promotion to Sacred Orders and of the banns of marriage, assistance at marriage and the nuptial blessing.

5. Exequial rites of deceased parishioners. By common law the body of a deceased Catholic should be taken to the church of the parish in which he had his domicile or quasi-domicile, unless he had legitimately elected another church for his funeral. (Can. 1216, 1223.) The Religious and secular clergy are strictly forbidden to induce any person to choose their church or cemetery for burial, under pain of nullity of the election. (Can. 1227.)

If the deceased belonged to several parishes, the funeral rights belong to the pastor of the parish in which he died.

When a person dies outside of his parish, the body should regularly be brought to his nearest parish church, if not too distant, for the funeral service, otherwise it may be taken to the nearest church. (Can. 1218.)

6. Blessing of houses in the manner set forth in liturgical books, on Holy Saturday or on any other day sanctioned by custom.

7. Blessing of the baptismal font on Holy Saturday, holding of public processions outside the church, solemn blessings, as, for example, of ships, outside of the church.

The legislator does not reserve to pastors the bless-

ing of candles, ashes, palms, fire, nor in general blessings imparted in churches or even outside but without solemnity; nor the functions of Holy Week, except the blessing of the font and of houses on Holy Saturday.

IX. RIGHT OF PASTORS TO PROPER SUPPORT. (Can. 463.)

271. 1. *Ancient Discipline.* St. Paul and the Church base the right of the clergy to a decent support on the principle that the laborer is worthy of his hire and that those who serve the altar partake with the altar. (1 Cor. ix, 13.) During the first centuries the Bishop received all the contributions of the people and gave to his clerics according to their needs. St. Cyprian speaks of monthly distributions for the clergy and of deprivation of them for serious offenses. (Epist. 28, 34.) The faithful made also sometimes personal offerings to ecclesiastics on the occasion of spiritual ministrations (Bingham, 1. c., Book v, c. iv, 14; Thomassin, 1. c., vol. vi, p. 11).

About the fifth century in the West ecclesiastical possessions, till then held in common, commence to be divided into four equal portions, one for the support of the Bishop, one for the maintenance of the clergy, one for the construction and repair of the church, and one for the relief of the needy and afflicted. All clerics, even those who labored in country districts, sent the oblations received in their church to the Bishop, who made the division. But this system soon offered inconveniences, which increased with the multiplication of country parishes and of contributions in kind and with acquisition of real property by churches. Hence, early in the sixth century (Agde, 506, Can. 22), we find in some places the practise of allowing some of the clergy

to retain the income from property acquired by the church. On the death of the possessor the property returned to the common fund. The name of *precariae,* given to lands or endowments granted in this manner, indicates the original instability of tenure, but repeated concessions to the incumbent of the same office gradually connected them so closely with the office itself that they became inseparable from it and formed the beneficium corresponding to the officium. The change took place slowly and was not complete till the ninth century or even the eleventh in city parishes.

Henceforth benefice constituted the ordinary title for ordination and revenue from it the main support of the clergy. Pastors, however, and generally those who possessed a *beneficium curatum,* had also other sources of income besides land or other real property. They had the tithes or part of them, various offerings made by the faithful, fees for the drawing up of deeds, for baptisms, marriages, churching of women, and funerals. (Lesetre, l. c.; p. 43; Gasquet, l. c., p. 86.) The Councils of this period, whilst permitting the acceptance of voluntary offerings, condemned the practise of exacting certain contributions on the occasion of baptisms, marriages, sick calls, funerals, and other functions. (London, 1125, Can. 2; York, 1194, Can. 3; Tours, 1163, Can. 6.) The practise continued, however, as frequently pastors, robbed of their legitimate revenues, had no other means of support. Finally Pope Innocent III, in the fourth Lateran Council (1215), decreed that clerics should not exact anything for the administration of the Sacraments, funerals, and other such services, but that, on the other hand, the faithful should respect laudable customs and the Bishops should compel them to do so, that is, to make the offerings intro-

duced by Christian piety. (42, X, V, 3.) This gave official sanction to the *jura stolae* and rendered obligatory oblations originally voluntary.

272. 2. *Present Legislation.* (*a*) In modern times many churches have lost the landed or other real property which constituted their endowment and from which the clergy derived their support, so that the pastors depend on the offerings of the people for their subsistence. The present law admits as endowment for a real benefice not only movable or immovable property owned by the benefice itself, but also contributions due by families or moral persons, voluntary and reliable offerings of the faithful, such as subscriptions, pew rent, collections which belong to the rector of the benefice, and stole fees sanctioned by custom or diocesan taxation. (Can. 1410.)

(*b*) The pastor has a right to that share in these various revenues and to those contributions which approved custom or legitimate taxation allots to him.

It is for the Provincial Council or the assembly of the Bishops of the province to fix the fees due for the administration of the Sacraments or sacramentals in the whole province, but these regulations or taxations have no legal force till they have received the approval of the Holy See, through the Congregation of the Council or of the Propaganda, according to countries. (Can. 1507.) For funeral fees local Ordinaries should draw up a list of them, if none such exists, with the advice, not necessarily the consent, of the cathedral chapter or diocesan consultors, and if they deem it advisable with the cooperation of the rural deans and pastors of the city. (Can. 1234.)

Stole fees belong regularly to the pastor, unless local legislation or episcopal statute provide otherwise. In some places a portion of them goes to the

pastor, the other to the church, and this arrangement has binding force wherever legitimately established. (Laurentius, Institutiones Juris Ecclesiastici, n. 1121; B. Ojetti, Synopsis Rerum Moralium et Juris Pontificii, Jura Stolae.) The second Westminster Council (n. 15) directs the Bishops to adopt that distribution which seems most conducive to the good of the mission.

273. (*c*) To the right of pastors corresponds a duty on the part of the faithful, and the Code empowers Ordinaries to impose some penalties on those who would without excuse refuse the legitimately established contributions. (Can. 2349.)

(*d*) Pastors, on the other hand, may not exact any more than the duly fixed contribution; should they demand more they would have to make restitution to the parties they overcharged or to pious causes, and in punishment of their offense the Ordinary may impose a fine upon them or even suspend them and remove them from office in case of relapse. (Can. 2408.)

(*e*) Even when another than the pastor has performed one of the pastoral functions, with or without proper authorization, the regular fee must go to the pastor, whatever may be the intention of the donor, which can not prevail over the prescriptions of law and whatever synodal regulations may exist on the subject, for the common law abrogates them. The priest who performed the function may retain only what would be given over and above the customary fee and even then on condition that such be clearly the intention of the person who made the offering.

(*f*) In all cases a pastor ought to give his services to the poor gratuitously. The third Plenary Council of Baltimore contained a similar provision (N. 296);

the Maynooth Synod of 1875 decreed that the Sacraments should never be withheld on the plea that the usual offerings are not forthcoming (N. 30), and it forbade under pain of suspension, *latae sententiae*, the refusal of Baptism to any infant because of the defect or subtraction of the aforesaid offerings. (N. 41.)

(*g*) The Code maintains the ancient law obliging pastors, like all other beneficiaries, to give to the poor or to pious institutions their *bona superflua*, that is, that portion of their revenues which they do not need for their decent support. (Can. 1473; Vermeersch, 1. c., vol. ii, n. 798.)

It provides also that one who does not discharge the duties of the office acquires no right to the fruits of the benefice. Thus a beneficiary who neglects the obligation of reciting the divine office without legitimate excuse ought to make restitution of the portion of the revenues corresponding to the duties omitted and give it to the church, or the diocesan seminary, or to the poor. (Can. 1475.)

X. DUTIES OF PASTORS. (Can. 464-470.)

274. 1. *Nature and Extent of a Pastor's Obligations.* (Can. 464.) A pastor is bound by his office, in virtue of a quasi-contract and therefore in justice, to discharge all the duties of the care of souls. This obligation extends to all his parishioners, unless they be exempted from his jurisdiction.

1°. Parishioners. He has under his care: (*a*) all persons who have a domicile or quasi-domicile in his parish.

(*b*) Persons actually in the parish and who have no domicile or quasi-domicile anywhere. (Can. 94.)

(*c*) Children under age and married women whose

parents and husbands respectively have their domicile or quasi-domicile in the parish. (Can. 93.)

2°. Exemption. Some persons, *v.g.* regulars, enjoy the privilege of exemption from episcopal jurisdiction, but others, whilst remaining under the authority of the local Ordinary, are withdrawn from that of the pastor of the parish in which they reside, and this either by provision of law or by special concession of the Bishop.

Thus the Code enacts that the Seminary is exempt from parochial jurisdiction and that the rector or his delegate takes the place of the pastor for all who live in the Seminary, except in matters pertaining to marriage or others for which the Holy See might have ruled differently in some particular institutions. (Can. 1368.)

Some ancient canonists denied the right of Bishops to exempt from parochial jurisdiction, as this amounts to dismemberment of the parish, but the Code, without approving undue restrictions placed on the authority of parish priests, explicitly declares that for just and grave reasons Bishops may grant exemption from the pastor's authority to religious families or communities with simple vows and to pious houses such as hospitals or colleges conducted by persons who lead a common life or are established for a charitable or religious purpose.

275. 2. *Obligation of Residence.* (Can. 465.) 1°. Origin. It has its foundation in the natural and divine right and has been confirmed and determined by ecclesiastical law. By divine precept, says the Council of Trent, it is enjoined on all who have the cure of souls to know their sheep, to offer sacrifice for them, and by the preaching of the divine word, by the administration of the Sacraments, and by the example of all good works to feed them; to

have a fatherly care of the poor and other distressed persons, and to apply themselves to all other pastoral duties: all of which offices they can not fulfill if they neither watch over, nor reside with, their flock, but abandon it after the manner of hirelings. (Sess. XXIII, c. 1, de Ref.).

Ancient Councils occasionally remind clerics of the obligation for them to remain in the church to which they belong, but enforcement of this law offered apparently little difficulty as long as church revenues were held in common and distributed by the Bishop to every one according to his needs and services rendered. After their division and the institution of benefices, when each ecclesiastic had his independent income, the abuses of absenteeism grew more frequent. From the twelfth century onwards Popes and Councils multiply enactments on the subject (Lateran, 1179, Can. 13; Lyons, 1274, Can. 13); the decretal collections devote to it an entire title. (Lib. III, Tit. IV, De Clericis non residentibus.)

A canon ascribed to Gregory IX seems to make the distinction, which earlier texts did not make, of benefices which require residence and others that do not (c. 17, X, III, 4), but benefices with the care of souls always belong to the first class. Bishops had authority to grant dispensations to pastors; Boniface VIII allowed them to give leaves of absence for the purpose of study to last as long as seven years. Ordinaries used these faculties quite freely and licenses of non-residence for leisure to attend schools, to go on pilgrimage or for other reasons became very common in some places, as shown by episcopal registers of the period. In 1225 the vicar of St. Felix has a license to put his benefice to farm for three years to go to the Holy Land; in 1338

the rector of Croxton obtains four years. (Cutts, l. c., p. 330.) In 1518, in a certain diocese, out of two hundred and forty-nine pastors one hundred and one had licenses of absence. (Wernz, II, n. 483; Thomassin, l. c., P. II, L. III, c. 34.)

To remedy these abuses the Council of Trent abrogated all indults of perpetual absence, confirmed the ancient laws on residence with the addition of some measures of a stricter character, and renewed against offenders the penalties imposed upon them by former Synods or Popes, particularly that of the loss of all the fruits of the benefice corresponding to the time of illegitimate absence. (Sess. VI, c. 2, de Ref.; Sess. XXIII, c. 1, de Ref.) The Code has retained the Tridentine discipline without substantial changes.

276. 2°. Personal Presence. All who have full charge of a parish as pastors, quasi-pastors, or vicars parochial must live in the parish house, not in a private residence, or with their family even though in the neighborhood, in a boarding-house or other such place. This implies that normally every parish should have a house for the clergy. It must be near the church, for the convenience of both clergy and people.

The Congregation of the Council declared (July 7, 1646; April, 1647) that the insalubrity of the location, severity of climate, infirmities or old age would not of themselves dispense a pastor from living in the parsonage. The Ordinary may, for just causes, grant him that dispensation, provided he does not go too far away from the church and this does not interfere with the performance of his parochial duties.

Benedict XIV remarks that the law demands more than physical presence and that a pastor would not

comply with its requirements if, although materially present, he spent his days in idleness or discharged only a few of his lighter obligations, leaving all the others to assistants. Some ancient canonists even held that such a pastor acquired no right to the fruits of his benefice, but modern ones more commonly admit that he does, provided that he has a worthy substitute to supply his negligence. (Inst., 17, n. 6.)

277. 3°. Legitimate Absences or Vacation. (*a*) Duration. Like the Council of Trent, the present law allows pastors to absent themselves from their parish during the course of a year for at most two months or sixty days, continuous or interrupted. They may, for legitimate causes, take a two months' vacation and observe strict residence during the rest of the year, or take two vacations of one month each or absent themselves from time to time for a few days provided the sum total does not exceed the legal number.

In the two months are not included the days of the annual retreat nor, according to the interpretation of canonists, should those short absences from the parish be taken into account which last only a few hours, even though they would occur frequently, nor the somewhat longer ones of, *v.g.,* half a day, provided they are not too often repeated. (Berardi, Theologia Pastoralis, n. 20.)

For a grave reason the Bishop may shorten the vacation or extend it. He could not at present grant indults of perpetual non-residence, nor lengthen the time of absence indefinitely so as practically to abrogate the common law on the subject. The practise of the Holy See in such cases is to permit absence for six months and for the same period again if the need lasts. If the same conditions exist at the end

of this time the pastor is invited to resign. (S. Raia, l. c., p. 82.)

278. (*b*) Reasons Required. Any reasonable cause will justify absence from the parish for a few days. The law does not explicitly require any for an absence of a week. For one which would last over a week it requires a legitimate cause, as, for example, the wish to take a needed rest, to visit relations or friends, etc. Only for a grave reason may the Ordinary prolong the vacation beyond the two months or restrict it to a shorter time. The Council of Trent enumerates as grave reasons: Christian charity, urgent necessity, obedience to superiors, evident utility of Church or State. (Berardi, l. c., n. 24.)

(*c*) Permission. For an absence of over a week, a pastor needs, besides a legitimate cause, the permission of the Ordinary given in writing and not simply orally. The present law does not require one for a shorter absence, in which it differs from the former discipline as generally understood; neither should, therefore, the Ordinary demand it, although he may ask pastors to let him know when they intend to absent themselves even for only a few days.

A Religious must obtain also the permission of his superior.

Should a pastor be compelled suddenly to go away, for some grave reason, and to absent himself for over a week, he must as soon as possible write to his Ordinary, explain to him the cause of his departure, and wait for his orders.

(*d*) Substitute. A pastor who absents himself must take care that his people do not remain without the necessary spiritual care. For a brief absence it may suffice for this to have an understanding with a priest of the neighborhood, unless special circum-

stances, such as, for example, the presence in the parish of persons dangerously sick, would call for a different arrangement.

For an absence of a week the law leaves it to the prudence of the pastor to provide for his flock in the manner which he finds most convenient.

When the absence is to last over a week he must secure the services of a vicar substitute and obtain for him the approval of the Ordinary, who thereby confers on him all the necessary powers to administer the parish. A Religious needs besides the approval of his superior. The Commission for the interpretation of the Code has declared that the substitute would not assist at marriages validly and licitly before obtaining the Ordinary's approval, but that he does after, even though he has not received, in the case of a Religious, that of his superior. (July 1, 1922; A. A. S., 1922, p. 406.)

A pastor called away from his parish suddenly must appoint a substitute and notify the Ordinary as soon as possible. By virtue of this appointment the vicar substitute has all the necessary powers until the Ordinary confirms or withdraws them. (N. R. T., Avril, 1921, p. 200; Janvier, 1923, p. 46.)

279. 4°. *Sanctions.* Renewing the decrees of the Council of Trent, the Code punishes the violation of the law of residence with the loss, incurred *ipso facto,* of the revenues of the benefice corresponding to the time of illegitimate absence. The offender ought to hand over those revenues to the Ordinary for distribution to the church or some pious institution or to the poor. (Can. 2381.)

The Ordinary should, moreover, order him back to his parish and upon his return inflict on him some further punishment, as deemed opportune. If he neither comes back nor gives any excuse for his ab-

sence, his parish should be declared vacant. If he does present some reasons to justify his continued absence, the Ordinary should study them with the assistance of two synodal examiners, and if they are found insufficient pronounce the sentence of privation after one or two more delays have proved of no avail. (Can. 2168-2175.)

280. 3. *Application of the Mass for the People.* (Can. 466.) 1°. By divine and ecclesiastical law all parish priests are bound, like Bishops, to offer the Holy Sacrifice for their flock on all Sundays and feastdays now of obligation or formerly of obligation and now suppressed. The feastdays of obligation under the present common law are the following: Christmas, Circumcision, Epiphany, Ascension, Corpus Christi, Imaculate Conception, Assumption, St. Joseph, SS. Peter and Paul, All Saints.

The Congregation of the Council published on Dec. 28, 1919, the following list of suppressed feasts to which, even after the promulgation of the Code, remains attached the obligation of offering Mass *pro populo*: Monday and Tuesday after Easter; Monday and Tuesday after Pentecost, Invention of the Holy Cross, Purification, Annunciation and Nativity of the Blessed Virgin, Dedication of St. Michael, Nativity of St. John the Baptist, St. Andrew, St. James, St. John, St. Thomas, SS. Philip and James, St. Bartholomew, St. Matthew, SS. Simon and Jude, St. Matthias, St. Stephen, Holy Innocents, St. Lawrence Martyr, St. Sylvester, Pope, St. Anne, mother of B. V. M., the day of the patron of the country and of the patron of the place. (A. A. S., 1920, p. 42.)

281. 2°. This law applies to all who have full charge of a parish canonically erected, to the pastor himself, to vicars perpetual (Can. 471), to

vicars who administer the parish during a vacancy (*Vicarii œconomi,* Can. 473), but not to vicars who act as substitutes, except by agreement with the absent pastor whom they replace (Can. 475), nor to the vicars adjutors or cooperators. (Can. 475, 476.)

Quasi-pastors must apply the Holy Sacrifice for their people at least on the feasts of Christmas, Epiphany, Easter, Ascension, Pentecost, Corpus Christi, the Immaculate Conception, St. Joseph, SS. Peter and Paul, All Saints. They have no strict obligation of doing so on other Sundays or feastdays. (Can. 306.)

Rectors of churches or of missions not yet erected into even quasi-parishes do not come under this law, nor chaplains or ordinary curates or superiors of Religious Communities.

3°. The obligation of saying Mass for the people is one of justice binding *sub gravi;* poverty does not excuse from it, nor custom, as explicitly declared (Can. 339, § 1), but the Holy See might, for serious reasons, dispense at least partially. The pastor may not receive a stipend for the Mass which he must offer for his parish, nor for another Mass which he might celebrate on that day, except by special papal indult. (Cocchi, l. c., p. 401.)

4°. Under the present law a pastor who has several parishes under his care, either as pastor of all of them in cases of perfect union, or as pastor of one and temporary administrator of the others, fulfills his obligation by the celebration of one Mass for them all. Likewise when a feastday falls on a Sunday he need not say two Masses for his people.

282. 5°. The Mass *pro populo* should be said on the day itself, but the Ordinary may, for a just cause, *v. g.* in order that the pastor may not suffer the loss of a notably more generous offering, allow

him to celebrate it on some other day. The law requires the intervention of the Ordinary in such cases, and the Congregation of the Council once answered that the wish to say Mass for a deceased person, *praesente corpore,* would not justify a pastor in putting off the Mass for the people to a week-day, of his own authority. (Jan. 26, 1771.)

The transfer of a feast does not affect the offering of the Mass *pro populo* unless it involves the transfer also of the obligation of hearing Mass and abstaining from servile works.

6°. Regularly the pastor should celebrate the Mass for the people in the parish church, but the law allows him to depart from this rule whenever in his judgment circumstances demand or suggest it, as, for example, on a day when the greater part of the congregation would hear Mass in a certain sanctuary. The Mass *pro populo* need not be a high Mass or the parochial Mass.

7°. The pastor himself ought to celebrate the Mass for his people. When legitimately prevented from doing so, he must have another priest say it in his place on the prescribed day. Should he find this also impossible, he ought to discharge his obligation on some other day either personally or through some one else. When he is legitimately absent from his parish, the law leaves him free to say Mass for his people where he happens to be or to have it said in his church by the priest who takes his place.

The Congregation of the Council, asked whether the pastor and his assistants might not say the Mass for the people each in his turn, answered in the negative. (Ap. 9, 1892.)

All Masses omitted for whatever cause should be said as soon as possible by the pastor himself or by another priest in his place.

283. 4. *Celebration of the Divine Offices.* (Can. 467.) 1°. A pastor must celebrate the divine services, which include, first, Holy Mass, then all the other sacred functions pertaining to the divine worship. No formal law obliges him directly to say Mass on week-days, but the Canon (863) which urges him to foster frequent and even daily Communion among the faithful implicitly calls for daily Mass in the church whenever possible.

As to other services, like Vespers, Benediction of the Blessed Sacrament, processions, novenas, and various religious celebrations, much depends on diocesan laws, liturgical rules, custom and the needs of the people. The Code has no explicit provision concerning them; it only recommends faithful observance of all ecclesiastical regulations regarding divine worship and careful avoidance, both in private and public devotions, of anything that might savor of superstition of sordid profit-making or be contrary to faith or the traditions of the Church. (Can. 1261.) Forms of prayer used in churches or oratories need the approbation of the local Ordinary, who can not permit, however, the public recitation of new litanies. (Can. 1259.) All kinds of unbecoming music should be banished from churches and liturgical laws on the subject strictly observed. (Can. 1264.)

284. 2°. Formerly the faithful were bound to hear Mass on Sundays and receive the Sacraments, at least the paschal Communion, in their parish church and to make their annual confession to their parish priest. A Council of Nantes, held about the year 658, commands all pastors to expel from their churches on Sundays and feast days any stranger who pretended to fulfill his duty there. In the thirteenth century a Council of Rouen (1235) re-

minds pastors of their duty to see before Mass on Sundays whether there are any outsiders in the church and to expel them unless they be travelers well known to them as such. The Council of Oxford of 1287 (Can. 25) contains a similar provision and the Council of Buda (1279, Can. 23) punishes parishioners who hear Mass on Sundays outside of their own church with privation of the Sacraments, and the priests who admit them, with suspension from the exercise of Orders incurred *ipso facto.*

Pastors defended their right in this matter with great vigor and perseverance chiefly against the encroachments of the Mendicant Friars, whom they accused of admitting or even attracting parishioners to their churches. In 1478 Pope Sixtus IV intervened in the quarrel between parish priests and Friars and forbade the latter to tell the faithful that they were not obliged to hear Mass on Sundays in their parish church. (Const. *Vices illius,* 2, I, 9, *Extravagantes Communes.*) This, however, did not put an end to the controversy. In modern times jurisdiction had a tendency to become less personal and more territorial; the people asked for more independence from parochial authority; Popes granted to Religious Orders privileges by which any one assisting at Mass on Sundays in their churches, provided he did not do so through contempt for his pastor, fulfilled his obligation. (Leo X, Bull *Intelleximus,* Nov. 13, 1517.) Owing to these various causes a custom freeing the faithful from the obligation of hearing Mass on Sundays in their parish church gradually prevailed against the common law. By the end of the sixteenth century it had become almost universal. The Council of Trent directs the clergy to recommend to the people frequently to attend the sacred services in their parish but does

not speak of obligation. (Sess. XXII, Decretum de observandis et vitandis in celebratione Missae.)

The present law likewise expresses the wish that the faithful assist at Mass and hear the word of God in their parish churches, and it asks pastors to admonish them to do so whenever convenient but without imposing it as a strict duty. Even the precept of paschal Communion can be fulfilled at present in any church. (Can. 859.)

285. 5. *Administration of the Sacraments.* The Code treats at length of the Sacraments and of the duties of pastors in regard to them in the third book; here it only affirms the general obligation of parish priests to administer them to the faithful whenever the latter legitimately ask for them or need them, which does not necessarily mean an urgent necessity.

(*a*) Children should receive Baptism as soon as possible and pastors must often remind parents of their duty in this matter and take care that the faithful know how to baptize in case of necessity. (Can. 743, 770.)

(*b*) Judgment of the dispositions of children for First Holy Communion rests with their confessor and their parents, but the pastor has the duty to watch that they do not approach the Holy Table without sufficient maturity and knowledge or on the other hand that they do not delay too long the reception of their Lord. (Can. 854.) For this purpose he should instruct them with special care and prepare them, particularly during Lent if possible, for the worthy reception of First Holy Communion. (Can. 1330.) To all the faithful he should recommend frequent and daily Communion, in accordance with the decrees of the Holy See. (Can. 863.)

(*c*) Although the sacrament of Confirmation is

not absolutely necessary for salvation, no one should neglect to receive it when occasion offers, and pastors must take care that their parishioners receive it in proper time. (Can. 787.) They should, therefore, prepare them for it each year at stated times by a continuous course of instructions. (Can. 1330.)

286. (*d*) Pastors are bound in justice and *sub gravi* to hear, either personally or through others, the confessions of the faithful under their care whenever they reasonably ask to be heard (Can. 892), and when the confessor can not doubt the proper dispositions of the penitent who asks for absolution he must neither deny nor defer it. (Can. 886.)

(*e*) There is likewise an obligation of justice for a pastor to administer Extreme Unction to any sick person who happens to be in his parish, even though only in passing. (Can. 938, 939.)

(*f*) To prepare subjects for the sacrament of Orders pastors ought to give special attention to boys who show signs of an ecclesiastical vocation and take care to preserve them from the contamination of the world, train them in piety, give them, if possible, the first lessons in the study of letters, and foster the germ of the divine vocation in them. (Can. 1353.)

(*g*) In order to secure the validity and lawfulness of marriages, the pastor whose right it is to perform the ceremony ought to inquire carefully beforehand and in good time whether there are any obstacles to the marriage, interrogating both the bridegroom and the bride, securing their Baptism certificate, and publishing the banns as prescribed by law. (Can. 1020-1032.)

He should not fail prudently to explain to the people the nature of marriage, its sacredness and properties and the impediments which render it un-

lawful or invalid (Can. 1018); nor should he omit to give to the spouses, according to their different conditions, instructions on the sanctity of the sacrament of marriage, their mutual obligations and the obligations of parents towards their children. (Can. 1033.) Minors should be seriously admonished not to contract marriage without the knowledge or against the reasonable opposition of parents. (Can. 1034.)

All pastors of souls must, as much as they can, deter the faithful from contracting marriages with non-Catholics, apostates, or members of prohibited societies. If they can not prevent such marriages they should do all in their power to have them contracted according to the laws of the Church and watch over the fulfillment of the promises. (Can. 1064, 1065.)

After the celebration of a marriage the parish priest or he who takes his place must register it as soon as possible in the book of marriages, even when another priest has performed the ceremony. He should, moreover, note in the baptismal record that the parties contracted marriage in his parish on such a day, and if the parties were baptized in another parish he should send notice of the marriage to the pastor of that parish. (Can. 1103.)

287. 6. *Christian Instruction.* 1°. The Code enjoins on pastors the greatest diligence in instructing the children in the Catholic faith. After preparing for the reception of the sacraments of Penance and Confirmation and First Holy Communion they ought to receive further instruction, that they may have a more complete knowledge of their religion. (Can. 1330, 1331.)

Religious instruction should also be given to children in elementary schools and to youths in colleges,

adapting the teaching to the capacity of every one. (Can. 1373.) This implies the obligation for pastors to have Catholic schools for the education of their children whenever circumstances permit.

2°. The law provides for the religious instruction of adults by means of sermons and catechetical instructions, that is, simple, familiar, and methodical explanations of the elementary truths of religion, in which the teacher often proceeds by way of questions and answers, although not necessarily.

(*a*) It is the proper and most grave duty of pastors of souls, says the legislator, to give such instructions to their people (Can. 1329); on Sundays and other days of obligation they should, at the hour most convenient for the parishioners, explain the catechism to the adults in the manner best suited to their capacity and dispositions. (Can. 1332.)

(*b*) On Sundays and feast days of obligation it is the duty also of pastors to preach the word of God in the customary homily, particularly during the Mass usually best attended. (Can. 1344.) They should devote their sermons primarily to the exposition of what the faithful must believe and do for salvation, abstaining from profane and abstruse arguments and from display of human wisdom or vain and ambitious eloquence. (Can. 1347.)

288. 7. *Care of the Poor and of the Sick.* (Can. 467-468.) 1°. The Code commands pastors to bestow their paternal care upon the poor and destitute, that is, to show interest in, and sympathy with, them and also to help them in their needs whenever possible. This may often require the organization in a parish of charitable societies, like the Conferences of St. Vincent de Paul or others, and the cooperation of Religious Communities.

2°. The sick and dying ought to be also the special object of the pastor's solicitude and charity. He should visit them frequently, see that they receive the Sacraments, assist them in their last agony, and commend their soul to God.

Any priest who attends the dying has power to apply to them the plenary indulgence *in articulo mortis* and he should not fail to do so, following in this, as in all his other ministrations to the sick, the directions of the Roman Ritual.

289. 8. *Vigilance and Works of Zeal.* (Can. 469.) 1°. A pastor ought to know his sheep, prudently admonish the erring, and watch that nothing contrary to faith and morals is taught in his parish, particularly in the public or private schools.

The Council of Trent gives it as one of the chief duties of pastors of souls and one of divine origin, to know their flock. (Sess. XXIII, de Ref., c. 1.) They must, therefore, take the necessary means to become acquainted with their parishioners and their religious needs. This will enable them to fulfill the duty of correction and prevent abuses from creeping into the parish.

One of the dangers against which a pastor must take special care to protect his people is that which arises from the spread of false doctrines by written or spoken word, chiefly in the schools.

2°. The Code not only advises but commands pastors to establish in their parish or encourage if they exist already, works of charity, faith, and piety, such as Confraternities, Pious Unions, Charitable Associations of various kinds, and other Societies that may help in the promotion of religious interests directly or even indirectly. Which of the many possible organizations they should foster it does not say, as much depends on the needs of the different

parishes and on other circumstances, but it demands that every parish should have the Confraternities of the Blessed Sacrament and of Christian Doctrine which, when legally erected by the Ordinary, become *ipso facto* affiliated with the Roman Confraternity. (Can. 711.)

290. 9. *Parochial Books and Archives.* (Can. 470.) 1°. The pastor must have the parochial books in good order, that is, keep an exact record of baptisms, confirmations, marriages, and deaths; he should have also the Liber Status Animarum or Census Book, containing a description, as complete as possible, of the spiritual condition of the parish.

As to the form of these books, he shall follow the commonly received customs or the prescriptions of the Ordinary.

2°. In the baptismal record he must insert a notice of the confirmation, promotion to Major Orders, solemn religious profession, or marriage, as the case may be, of the baptized person. Marriages of conscience, however, are not entered into the ordinary records but in special ones. (Can. 1107.)

When issuing baptism certificates he should always embody all these details, because of their possible juridical consequences.

3°. At the end of each year the pastor should send to the episcopal chancery a copy of all the parish books with the exception of the census book.

4°. To authenticate official documents, such as baptism certificates, the pastor should make use of a parochial seal.

He must have parochial archives in which to keep the parochial books together with the letters of the Ordinary and other documents which it may be necessary or useful to preserve, for example, the inventory of the movable or immovable property belong-

ing to the church (Can. 1522), the deeds that establish the right of the parish (Can. 1523), the record of its obligations. (Can. 1549.)

The Ordinary or his delegate inspects these various documents on the occasion of the diocesan visitation or at other convenient times, but the pastor should take conscientious care that they do not pass into strange hands.

Chapter X

Parochial Vicars

(Can. 471-478.)

(Wernz, II, n. 837; Blat, l. c., p. 440; Cocchi, l. c., n. 353; Vermeersch, l. c., n. 419.)

291. A vicar, as the word implies, is a person who takes the place, or acts in the name, of another. Vicars Apostolic administer a district in the name of the Holy See, Vicars Capitular rule a diocese in place of the Chapter, Vicars-General exercise jurisdiction in the name of the Bishop, Vicars Parochial assist or replace pastors in parish work.

The Code distinguishes five kinds of parochial vicars: those who administer a parish in the name of a moral person and whom canonists designate as vicars, proper, vicars perpetual, vicars rectors; the vicars œconomi or administrators, who have charge of a vacant parish; the vicars substitutes, who take the place of an absent pastor; the vicars adjutors or coadjutors, who assist a totally or partially incapacitated pastor; the vicars cooperators or assistants, curates, who assist a pastor valid and active but unable to attend to all the needs of a parish.

I. VICARS PERPETUAL. (Can. 471.)

(Thomassin, P. I, L. II, c. 27; L. III, c. 22; Gasquet, Parish Life in Mediaeval England, p. 15, 90; E. Cutts, l. c., ch. vii.)

292. 1. *Origin.* As said before (Can. 452), a parish may be united or given to a moral person,

as, for example, a chapter or a religious house, in such a way that the moral person becomes the rector of the parish, but the law demands that in these cases the actual care of souls be entrusted to an individual person or vicar, the juridical person retaining only the habitual pastorship.

When monasteries first assumed the direction of parishes, they often discharged the various parochial duties through different members of the community indiscriminately or through hired priests revokable at will. Experience soon showed the inconveniences of this system, and we find the Councils insisting on the necessity of appointing vicars with some fixity of tenure and a fair share in the revenues of the benefice. (Poitiers, 1078, Can. 6; Lateran, 1215, Can. 32; Avignon, 1326, Cologne, 1536; Trent, Sess. VI, c. 7, De Ref.) Vicarages occupy an important place in the organization of dioceses in the Middle Ages and in some countries parishes united to monasteries, capitular churches, or dignities came at one time to form the majority. In modern times their number has considerably decreased and the Holy See has reserved these unions to itself.

293. 2. *Appointment and Removal of Vicars.* Ordinarily the habitual rector, Religious superior, chapter, or other juridicial person, presents the candidate and the Bishop gives him the canonical institution after ascertaining his fitness by means of an investigation or examination, in the same manner as in the case of a pastor, without concursus. By custom, special privilege, or the law of foundation, the Bishop himself may have the right of nomination and hence of free appointment.

Of its nature the office of vicar is a permanent one. The patrons retain no authority over him. But if he belongs to a Religious Order, his superior

and the Bishop, and if to the secular clergy, the Bishop, can revoke him in the same way and on the same conditions as an ordinary pastor. Like pastors, too, he may enjoy various degrees of stability.

3. *Rights and Duties.* A vicar has all the rights, honorary prerogatives, and duties of a pastor. The whole burden of the care of souls falls upon him. He exercises jurisdiction by virtue of his office and independently of the habitual rector.

The Bishop determines what portion of the revenues of the parish should go to him. Canonists speak of about one third; in all cases it should suffice for a decent support.

II. VICAR ŒCONOMUS OR ADMINISTRATOR OF A VACANT PARISH. (Can. 472-473.)

294. 1. *Appointment.* As soon as a parish becomes vacant, the Ordinary of the place, that is, the Bishop or Vicar Capitular, but not the Vicar-General except by special mandate (Can. 452 § 3), must appoint an administrator or vicar œconomus to govern it during the vacancy. The Code prescribes no formality for this besides obtaining the consent of the proper superior when the candidate is a Religious.

As this appointment may require a few days, the legislator authorizes and directs the assistant pastor meanwhile to take charge of the parish unless provided otherwise as the law permits, by local legislation, custom or particular episcopal decree. This duty devolves on the first assistant by rank or seniority when there are several of them and upon the nearest parish priest when there is no assistant. In parishes entrusted to Religious, the superior of the house assumes this office.

The Ordinary of the place should determine, in

Synod or out of it, which parish should be considered as the nearest one in this matter, particularly when some doubt may exist about it, taking into account not only the material distance but also the facilities of communication and possibly other circumstances. In the absence of any such episcopal definition the material distance must serve as a norm.

Whoever thus assumes temporary administration of a parish must without delay inform the Ordinary of the vacancy.

295. 2. *Rights and Duties.* The administrator has full charge of the parish. In what pertains to the care of souls he has the same obligations and enjoys the same rights as the pastor; thus he must observe the residence and say Mass for the people, unless dispensed by special indult. Should he have the administration of several parishes one Mass fulfills the obligation (A. A. S., 1922, p. 528).

Some canonists consider his jurisdiction as ordinary because attached to his office, others as quasi-ordinary because granted him by law, others, again, as only delegated, because his functions have not the permanency required for an office strictly so called. In practise this difference of opinions has little importance, for all admit that he has ordinary jurisdiction for confessions (Can. 873, § 1) and in other matters universal jurisdiction, which he can delegate as the Cong. of Council had declared (Sept. 12, 1874) and the Code clearly implies. (Can. 451, § 2, n. 2.)

Although possessing full parochial powers, he should, by reason of the temporary character of his office and on the principle that forbids innovation during vacancies, abstain, particularly in what does not pertain directly to the care of souls, from anything that might cause some prejudice to the pastor

or to the parish, by, for instance, diminishing the income, increasing the burdens, giving up privileges.

The fruits of the parochial benefice do not all belong to the administrator, but only that share which the Ordinary assigns to him for his decent support.

3. *Cessation of Office.* When an administrator goes out of office by resignation or removal and more commonly by appointment of a new pastor, he must hand over to the new pastor or administrator, in presence of the rural dean or of another priest designated by the Ordinary, the key of the archives and the inventory of the books and documents and other things pertaining to the parish. He must also render an account of the receipts and expenses for the time of his administration.

III. VICAR SUBSTITUTE. (Can. 474.)

296. 1. *Appointment.* A pastor who absents himself from his parish for more than a week must provide a substitute to take his place and have him approved by the Ordinary; he must have also the approval of his superior if he belongs to a Religious Order. Should the pastor be called away suddenly, for some grave reason, he would leave a substitute in charge of the parish, notify the Ordinary as soon as possible, and abide by his decision.

Again, when a pastor deprived of his parish by judicial sentence has recourse to the Holy See, the sentence is not carried out, but the Ordinary must appoint a substitute to administer the parish pending the appeal.

297. 2. *Rights and Duties.* The vicar substitute takes the place of the pastor in all that pertains to the care of souls.

1°. He may, therefore, be assimilated to a pastor (Can. 465 § 4, 5); he possesses ordinary jurisdiction

in the forum of penance (Can. 873, § 1), and in general enjoys full parochial powers in about the same sense as the vicar œconomus. The Ordinary who approved or appointed him and the pastor who designated him may, however, except some matters, for example marriages, particularly in cases of a very short absence.

These powers come to him from the law itself by the very fact of his valid appointment. The Commission for the Interpretation of the Code confirmed this view by deciding the following points on July 1, 1922. (A. A. S., 1922, p. 406; Nouvelle Revue Théologique, Jan., 1923, p. 46; cf, Av. 1921, p. 200.)

(*a*) After receiving the approval of the Ordinary the substitute assists lawfully and validly at marriages, provided no limitation was put to his powers.

(*b*) This would not hold before approval by the Ordinary.

(*c*) It would hold in the absence of approval by the Religious superior when required, provided that of the Ordinary be not wanting.

(*d*) It holds likewise before receiving any approval in the cases of sudden departure as long as the Ordinary, duly notified, has not provided otherwise and not disapproved the choice made by the pastor, nor appointed any one else. This implies that designation by the pastor under the conditions laid down in the Code suffices to constitute a vicar substitute with all the powers attached to his office by law.

In what does not pertain strictly to the care of souls the authority of the substitute would depend largely on the instructions received.

The Council of Trent (Sess. VI, c. 2, De Ref.) affirms the right of the vicar substitute to a share in the fruits of the benefice, to be determined by

the Ordinary. The Code does not mention this matter, leaving it, no doubt, to the pastor and his vicar to settle by mutual agreement.

2°. Since the vicar substitute takes the place of the pastor in what pertains to the care of souls, his duties are the same as those of the pastor himself, excepting those, however, which the latter can and chooses to discharge personally even during his absence, for example, the offering of Holy Mass for the people.

IV. VICAR ADJUTOR OR COADJUTOR. (Can. 475.)

298. 1. *Appointment.* The canonical reasons for appointing a vicar coadjutor, called also some times administrator, are: old age, mental weakness, unfitness, whether moral or intellectual, blindness or any other cause rendering a pastor permanently unable to administer his parish. Under the present law temporary inability would not ordinarily justify this measure, as it might suffice to have a vicar co-operator. On the other hand, if the appointment of a vicar coadjutor proves insufficient to provide for the good of souls, the pastor must be removed. (Can. 2147-2167.)

The Ordinary appoints the vicar coadjutor freely or on presentation by the superior in the case of parishes entrusted to Religious. He does not need the consent nor has he necessarily to ask the advice of the pastor. (Trent, Sess. XXL, c. 5, De Ref.; Wernz, l. c., n. 639.) The Holy See alone can appoint coadjutors with right of succession.

299. 2. *Rights and Duties.* The vicar adjutor given to a pastor completely incapacitated has full charge of the parish, with all the rights and duties of the pastoral office. The obligation of the Mass *pro populo* remains, however, with the pastor, who may

discharge it personally or through somebody else and through the vicar himself.

If the pastor can attend to some of his duties the vicar coadjutor takes his place only in part; he has not full charge of the parish and only delegated and limited jurisdiction. The letter of appointment defines the extent of his powers and duties.

In any case, as long as the pastor enjoys the full use of his faculties, he retains the direction of the parish, and the vicar remains under his authority in what concerns parochial work. The Bishop should determine the modalities and the extent of this subjection.

For the support of the vicar coadjutor the Ordinary may take from the income of the pastor if sufficient, from the revenues of the parish, or any other source he chooses.

V. VICARS CO-OPERATORES, CURATES OR ASSISTANT PASTORS. (Can. 476.)

300. 1. *Appointment.* 1°. Former Discipline. A Council of the sixth century (Vaison, 529, Can. 1) commands all parish priests to take young lectors into their house, according to the custom already existing in Italy, and instruct them in the singing of psalms, the reading of the lessons of the Church and in the law of God, thus to prepare worthy successors for themselves. A Council of Toledo (675, Can. 14) asks every ecclesiastic who sings or celebrates to have with him a helper who can take his place if he falls sick. All through the Middle Ages each pastor had regularly to provide his co-workers, lower clerics, deacons, and curates. As far as possible, he recruited them in the parish, trained them and in due time brought them to the episcopal city for Ordination or presented them to the Bishop on the occasion of the diocesan visitation. Thus Blessed

Francis d'Estaing, Bishop of Rodez, in the course of the visitation of the year 1519, gave tonsure to twelve candidates at Drulhe, to twenty at St. Parthem, to twenty more at Firmy, to twenty-eight at Montbazens, to eighty-three at Aubin, to two hundred and fourteen at Villefranche. (Revue Historique du Rouergue, Mars, 1923, p. 459.)

301. The Council of Trent simply enacted that the Bishop had authority to compel the rector of any church to take as many assistants as the good of the people required. He approved and confirmed the candidates whom the rector continued to nominate.

This had remained the common law till the publication of the Code, but in several countries, France, Spain, Germany, Austria, under the pressure of circumstances in modern times, the custom had gradually prevailed for the Bishop to nominate and appoint assistants without the intervention of the pastor. The loss of benefices in many places, the scarcity of priests, the necessity for the Ordinary to provide for the support of his clergy and for the needs of the different parishes, demanded that he should enjoy greater freedom in the administration of the diocese. The Congregation of the Council, interrogated on the subject (Aug. 14, 1863), declared it permissible to follow the existing custom until the Holy See would make some other provision. It only recommended to Bishops, in the appointment as well as in the removal of assistants, to take into account as much as possible the wishes of the pastors.

302. 2°. Present Legislation. It maintains the right of the Bishop affirmed by the Council of Trent; whenever a pastor is unable to take proper care of his parish because of the large number of people or for some other reason, like long distance, difficult communications, differences of nationality or lan-

guage, temporary infirmity of the pastor himself, he may give him as many assistants as required to look after the spiritual interests of the congregation.

At the same time it is explicitly stated, in confirmation of the existing custom, that the nomination of secular assistants belongs to the Ordinary of the place, not to the pastor, as it did under the Tridentine law. Assistants belonging to a Religious Order must be presented by the competent superior and approved by the Ordinary.

On the other hand, as a remnant of the ancient discipline and recognition of the pastor's rights, the law demands that the Ordinary or Religious superior should consult the pastor before making the nomination or presentation, *audito parocho*. This seems to imply that the omission of this formality would vitiate the appointment and consequently render invalid, for example, general delegations for assistance at marriages, not, however, the delegation received from the Bishop for the administration of the other Sacraments. (Cocchi, n. 368; Maroto, o. c., n. 285; contra, Vermeersch, Epitome, I, n. 114; Periodica de Religiosis, May, 1923, p. 7.)

The Archbishop of Agram in Croatia, having asked whether, where the custom had existed for a hundred years of appointing assistants without consulting the pastors, it could not be retained because of the scarcity of priests and to give more freedom to the Ordinary, the Congregation of the Council answered: let the prescriptions of the Code be observed (Nov. 14, 1920; A. A. S. 1921, p. 43; Monitore Eccl., Feb. 1921, p. 58; Canoniste Contemporain, Mars, 1921, p. 185.).

303. 2. *Powers.* The duties and obligations of curates must be gathered from diocesan statutes, the letters of the Ordinary, and the commission of the

pastor. The latter may not, however, annul the dispositions of diocesan law or episcopal decree.

Curates may be appointed for the parish at large or for a portion of it, as for example, for a certain section of it more distant than the rest from the parish church and in which there may exist a chapel, or again for a special group of persons who use a different language.

The common law does not specify any particular powers as necessarily belonging to assistants. They have not, therefore, an office properly so called nor ordinary but only delegated jurisdiction of the internal forum.

Although they do not possess it by the mere fact of their appointment, they may receive from the Ordinary or the pastor (Can. 1096) general authorization to assist at marriages in the parish and, unless forbidden, they may subdelegate it for particular cases. (Cappello, De Matrimonio, n. 673, 674; Wernz, II, n. 838; vs. Cocchi, n. 369.)

They may likewise and usually they do receive general jurisdiction to administer the Sacraments, preach and perform the other parochial functions, except a few which may be reserved or should be presumed to remain reserved to the pastor because of their importance or special difficulty. When they possess universal jurisdiction they may subdelegate it in accordance with the general principles of law (Wernz, 1, c.; Bargilliat, Droits et Devoirs des Curés et des Vicaires, n. 545), for particular cases and always with due regard for the wishes of the pastor. They can not, however, subdelegate power to hear confessions as the law, reserves this prerogative to Ordinaries.

304. 3. *Duties.* They, too, are defined in detail less by common law than by diocesan statutes and

instructions of the Ordinary. The pastor can enact also regulations concerning matters which pertains to the welfare of the parish and the order of his house, but not in regard to the personal life of his assistants.

The Code lays down as a general principle that by virtue of his office and except for some explicit disposition to the contrary, curates have to supply their pastor and assist him in all the work of the parish at least when requested. The Ordinary might appoint an assistant with the understanding that he will not have to preach or attend the sick, etc., but this would require a special and express agreement.

Curates are bound to residence, not necessarily in the same sense as pastors, the provision, for example, about the vacation of the latter not applying to them but as determined by diocesan statutes, legitimate custom, or episcopal rules. Thus the second Westminster Council (1855, X) enacts that "assistant priests ought not to absent themselves from home even for a day without notifying the rector, nor be absent on a holy day of obligation without the leave of the Bishop except in case of urgency." According to the Synod of Maynooth (1900, n. 354, 355) absence from the parish even for one night should be made known to the pastor; for an absence of three days, the Bishop should be notified and an absence for five days requires the written permission of the Ordinary as does also absence on a Sunday or feast-day of obligation. In the United States, similar regulations exist; in San Francisco, for example curates are forbidden to absent themselves from the parish for one night without the express permission of the pastor. (Dec. 23, 1910.)

In some places curates live by themselves; in others they live with the pastor in the parochial resi-

dence. The Code strongly favors the latter system and, without making it obligatory, urges Bishops prudently to introduce it where it does not exist. The fourth Westminster Council recommends fidelity to the common table and common recreation (1873, XI, 7, 8): "The common table in presbyteries is the mark of brotherly charity which absence lessens, yea if frequent completely banishes. Rarely, therefore, should they take meals elsewhere, much less habitually."

305. 4. *Salary.* The Ordinary has authority to fix the retribution due to assistants for their honest support, taking into account the circumstances of time, place and person, the work done and the resources of the church. It is taken from the revenues of the parish or from some other source but not from the pastor's salary.

Regularly stole fees belong to the pastor, but custom, particular legislation, or episcopal decree may assign a share in them to curates as part of their salary. The fourth Provincial Council of Baltimore says: "Lest greed should infect the priestly ranks and discord arise between priests dwelling together on account of the offerings customarily made on occasions of the administration of the Sacraments of Baptism and Matrimony, we warn Bishops, either in diocesan Synod or otherwise if they so determine in the Lord, after consulting the clergy, to fix a just rule of distribution, not overlooking the heavier burdens and the greater authority of the pastor. (1850, III.)

306. 5. *Relations with the Pastor.* The legislator enjoins on curates subjection to the pastor under whose authority they labor, and he asks pastors paternally to instruct his curates, to advise and train them in the care of souls, to watch over them and,

at least once a year, to give to the Bishop an account of their life and work.

Particular Synods inculcate likewise: on the part of the pastor, fatherly benevolence, kind direction, due recognition of the priestly character of the assistants, good example, timely encouragement, practical advice, fair distribution of the duties; on the part of the curates, respect for the pastor's authority and reputation, constant docility, hearty cooperation, consultation in matters of importance, patience even when apparently wronged.

VI. REMOVAL OF PAROCHIAL VICARS. (Can. 477.)

307. As said before, the removal of vicars perpetual follows the same rules as that of pastors.

In regard to other vicars, if they belong to a Religious Order the Ordinary of the place may remove them at will after notification to the superior as also the superior after notification to the Ordinary. If they belong to the secular clergy they may be removed at will by the Bishop or Vicar Capitular, but not by the Vicar-General without special mandate, just as the Vicar-General needs a special mandate to appoint or approve them (Can. 455, § 5) with the possible exception, according to some, of the vicar substitute. (Nouvelle Revue Théologique, Avril, 1921, p. 205.)

Removal at will does not mean without cause, but without necessarily canonical cause and without legal process, for any reasonable motive, such as the promotion of the curate, the good of a particular parish or the general good of the diocese. The Church does not approve of arbitrary or unreasonably frequent changes, and if a curate considered himself unfairly treated or injured either in his reputation or otherwise by repeated transfers from one place

to another, recourse to a higher authority would remain open to him, although *in devolutivo* only. Meanwhile he should obey orders.

In some places the office of vicar has a benefice attached to it. In such cases the vicar cooperator enjoys the same degree of permanency as a pastor and can be removed on the same conditions and with the same formalities, with this difference only, that to the usual canonical causes for removal must be added grievous disobedience to the pastor in the exercise of his functions.

VII. PRECEDENCE OF VICARS. (Can. 478.)

308. 1°. Just as the pastor of the cathedral church takes precedence over all other pastors and vicars or assistants in the diocese, so is this privilege enjoyed by the vicar perpetual, that is, by the one who has the actual, whilst the Chapter retains the habitual, care of souls of the cathedral parish. He is the real pastor of the cathedral with all powers and duties of the pastoral office.

2°. For vicars administrators or œconomi precedence is regulated by the general rules on the matter. (Can. 106.) They have the rank of pastors whose place they occupy and among pastors they rank according to seniority in office, or in Holy Orders, or in years.

3°. Vicars substitutes or vicars adjutors, whilst in office take precedence over vicars cooperators or assistants, these being of an inferior rank.

4°. Vicars cooperators, whilst in office, take precedence over other priests attached to the parish church, not over those who would not have such connection and would otherwise be their seniors.

Chapter XI

Rectors of Churches

(Can. 479-486.)

309. 1. *Notion.* The churches here in question are neither parochial, nor capitular, nor attached to a Religious house and community that would use them for the celebration of the sacred offices.

They differ also from the chapels of nuns or of lay religious, of confraternities or other lawful associations. They may be, for example, sanctuaries of devotion not intended for any particular group of persons.

The priests in charge of them receive the name of rectors; they take care of them and perform therein various religious functions but have no jurisdiction proper and no people of their own.

2. *Appointment of Rectors.* The Ordinary of the place appoints rectors of churches freely unless some other person, physical or moral, can lawfully claim the right of election or presentation, in which case he approves them, that is, confers upon them the powers of their office.

If such a church belongs to an exempt Religious Order, without, however, being united with a Religious house, as said above, the superior nominates the rector, but the local Ordinary must approve him.

If it is united with a Seminary or other College under the direction of clerics the superior of the Seminary or College is at the same time the rector of the church unless the local Ordinary has provided differently as he has the right to do.

310. 3. *Functions.* The rector of a church can not exercise therein the strictly parochial functions, that is, those which are reserved to the pastor by law. (Can. 462.) Hearing confessions is not one of them.

He may celebrate the divine offices even in a solemn manner provided it be not contrary to the laws of foundation and does not interfere with the parochial ministry. In case of doubt on this last point the Ordinary of the place should settle the controversy or dispute between rector and pastor and make proper provisions to avoid such difficulties in future.

When, in the judgment of the local Ordinary, one of these churches is so distant from the center of the parish that the people living near it can not without serious difficulty frequent the parish church and there assist at the divine offices, particularly Holy Mass, the Ordinary can, even under the threat of severe punishment, command the rector to have Mass and other services at the hours more convenient for the people, to announce the holydays and fastdays to the faithful, to give catechetical instructions and explain the Gospel.

The pastor may, under the same circumstances, take the Blessed Sacrament from that church if it is kept there, to administer it to the sick or dying. Without the, at least presumed, permission of the rector or other legitimate superior, for example, the Ordinary of the place, no one, not even the local pastor, may say Mass in such a church, or administer the Sacraments, or perform any other sacred functions, for instance, give Benediction of the Blessed Sacrament. This permission should be granted or refused by the rector in accordance with the prescriptions of law, general and particular, as inter-

preted by legitimate custom. Thus a priest who wishes to say Mass must exhibit letters of his Ordinary unless he be known (Can. 804); to hear confessions one must have jurisdiction; to preach special authorization from the Ordinary is required. (Can. 1337-1342.)

311. 4. *Duties.* The rector of the church has the duty, under the authority of the local Ordinary, in conformity with the legitimate statutes and with due regard for acquired rights of other persons, to take care that the divine services are properly carried out therein and the prescriptions of the sacred canons observed; that all obligations are faithfully fulfilled, for example, in regard to foundations of Masses, novenas, etc.; that the property of the church be prudently administered; that the sacred furniture and buildings be properly and neatly kept; that nothing repugnant to the sanctity of the place or to the respect due to the house of God be ever tolerated in the church.

5. *Removal.* The Ordinary of the place may, for any just cause and without any legal proceedings, remove a rector, even though elected or presented by other persons.

A rector belonging to a Religious Community even with only simple vows is removed like a pastor, by the Ordinary after notifying the superior or by the superior after notifying the Ordinary of the place.

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